

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: DONNA P. THOMAS

(Case No. 12646)

A hearing was held after due notice on February 7, 2022. The Board members present were: Dr. Kevin Carson, Mr. John T. Hastings, Mr. Jordan Warfel, and Mr. John Williamson.

Nature of the Proceedings

This is an application for a variance from the side yard setback requirement for a proposed structure.

Findings of Fact

The Board found that the Applicant is requesting a variance of 0.5 feet from the five (5) feet side yard setback requirement on the east side for a proposed elevator. This property is located at the south side of Admiral Road within the Tower Shores Subdivision (911 Address: 39950 1E Admiral Road, Bethany Beach) said property being identified as Sussex County Tax Map Parcel Number 134-5.00-110.00 E-2 ("the Property"). After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a survey of the Property dated August 3, 1984, an email from the Applicant, a boundary survey plan of the Tower Shores Beach Association dated May 20, 2019, letters in support of and in opposition to the Application, an aerial photograph of the Property, and a portion of the tax map of the area.
2. The Board found that the Office of Planning & Zoning received five letters in support of the Application and one letter in opposition to the Application.
3. The Board found that Donna Thomas and Randy Penitoney were sworn in to testify about the Application.
4. The Board found that Ms. Thomas testified that she has owned a four-story duplex in Tower Shores since the mid-1970s and is residing in this home full-time. She noted that she built her home in the 1980s and that the lot was created in the 1950s.
5. The Board found that Ms. Thomas testified that she has a medical condition and needs an elevator.
6. The Board found that Ms. Thomas testified that there are three other elevators in the community.
7. The Board found that Ms. Thomas testified that there is no clear alternative to put the elevator to meet the current setbacks.
8. The Board found that Ms. Thomas testified that the proposed elevator is the minimum size possible to meet handicapped accessibility requirements.
9. The Board found that Ms. Thomas testified that the elevator cannot be built in current house footprint because of the existing structure's layout.
10. The Board found that Ms. Thomas testified that the one opposition is the landowner to the west and the elevator will not be visible from his property.
11. The Board found that Ms. Thomas testified that the structure is also on pilings which adds to the complexity of the design.
12. The Board found that Ms. Thomas testified that they cannot put the elevator in the front due to parking restrictions. She noted that parking is under the house and, if the elevator was placed in front of the house, the access to the parking would be blocked.
13. The Board found that Mr. Penitoney testified that the area where the elevator will be placed is in the rear of the structure and not visible from the street or adjacent properties.

14. The Board found that Mr. Penitoney testified that it would be very difficult to place the elevator within the current structure.
15. The Board found that Mr. Penitoney testified that the variance is needed for the southeast corner of the lot.
16. The Board found that no one appeared in support of or in opposition to the Application.
17. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, which the Board weighed and considered, the Board determined that the application for the variance met the standards for granting a variance. The findings below further support the Board's decision to approve the Application for the variance.
 - a. The Property is unique due to its small building envelope and existing development. The Property is a small lot that consists of approximately 6,000 square feet and was developed by a house in the 1980s. The house is built on pilings with parking under the home and access to those spaces cannot be blocked. The house also consists of multiple stories and the Applicant suffers from a medical condition which necessitates the usage of an elevator for her to safely navigate within the home. The Applicant intends to construct a small addition to the building to accommodate the elevator but, due to the limited building envelope, however, the Applicant is unable to construct the addition on the site without encroaching into the setback area. The Board finds that the lot's unique conditions have created an unnecessary hardship and exceptional practical difficulty for the Applicant who seeks to construct an addition on the lot.
 - b. The unnecessary hardship and exceptional practical difficulty are not being created by the provisions of the Sussex County Zoning Code.
 - c. Due to the uniqueness of the lot, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property has a unique and limited buildable area. The Applicant seeks to construct a reasonable addition to the existing house for an elevator but is unable to do so without violating the Sussex County Zoning Code. The Board is convinced that the variance is necessary to enable the reasonable use of the Property as the variance will allow a reasonably sized addition to be constructed on the Property. The Board is convinced that the shape and location of the addition are also reasonable, which is confirmed when reviewing the survey provided by the Applicant. The Board notes that the addition will be used to provide an elevator for the Applicant to safely navigate her home.
 - d. The unnecessary hardship and exceptional practical difficulty were not created by the Applicant. As previously stated, the Property has unique conditions and these conditions have resulted in a limited building envelope on the Property. These conditions have created the unnecessary hardship and exceptional practical difficulty.
 - e. The variance will not alter the essential character of the neighborhood nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare. The Board is convinced that the addition will have no effect on the character of the neighborhood. The addition will be located less than 1 foot from the setback line. There are other similar elevators in the neighborhood as well. The Board was not convinced by opposition that the addition would somehow alter the essential character of the neighborhood. Rather, the Board received letters of support from neighbors who argued to the contrary.
 - f. The variance sought is the minimum variance necessary to afford relief and the variance requested represents the least modification possible of the

regulation at issue. The Applicant has demonstrated that the variance sought will allow the Applicant to place the reasonably sized addition on the Property. The Board is convinced that the Applicant explored other options for the size, shape, and location of the addition but was constrained by the conditions of the lot.

- g. The condition or situation of the Property and the intended use of the Property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the Sussex County Zoning Code.

The Board granted the variance application finding that it met the standards for granting a variance.

Decision of the Board

Upon motion duly made and seconded, the variance application was approved. The Board Members in favor of the Motion to approve the variance were Dr. Kevin Carson, Mr. Travis Hastings, Mr. Jordan Warfel, and Mr. John Williamson. No Board Member voted against the Motion to approve the variance application. Mr. Jeffrey Chorman did not participate in the discussion or vote on this application.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY



John Williamson
Chair

If the use is not established within two (2) years from the date below the application becomes void.

Date April 4, 2022