

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: LAURA L. TURNER COX & HOWARD COX

(Case No. 12756)

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

Nature of the Proceedings

This is an application for variances from the front yard and side yard setback requirements for existing structures.

Findings of Fact

The Board found that the Applicants are seeking the following variances:

1. A variance of 17 feet from the thirty (30) feet front yard setback requirement for the existing dwelling on the Proposed Lot 1;
2. A variance of 26.5 feet from the thirty (30) feet front yard setback requirement for existing steps on the Proposed Lot 1; and
3. A variance of 2.5 feet from the five (5) feet side yard setback requirement on the south side for the existing carport on the Proposed Lot 1.

This application pertains to property that is located on the northwest side of New Castle Road within the Indian River Acres Subdivision (911 Address: 30207 New Castle Road, Dagsboro); said property being identified as Sussex County Tax Map Parcel Number 134-7.00-41.00 (hereinafter "the Property"). After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a site plan of the Property dated June 13, 2022 ("the Site Plan"), a letter from Mackenzie Peet, property information, a deed to the Property, a plot plan for Indian River Acres, a setback information request form, photographs, a portion of the Sussex County Zoning Code, Ordinance No. 2557, 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 no correspondence in support of or in opposition to the Application.
3. The Board finds that the Applicants propose to re-subdivide the Property into two lots identified as Lot 1 and Lot 2 on the Site Plan. The Application pertains to structures located on Lot 1.
4. The Board found that Laura L. Taylor Cox and Howard Cox were sworn in to give testimony about the Application. Mackenzie Peet, Esquire, presented the Application on behalf of the Applicants.
5. The Board found that Ms. Peet stated that the Property consists of Lots 1 & 2 in the Indian River Acres subdivision and that Indian River Acres was created before the enactment of the Zoning Ordinance. She noted that the Applicants are seeking variances and that the Applicants to construct this double lot to its original condition as two separate lots for the purpose of developing a single-family home on Lot 2.
6. The Board found that Ms. Peet stated that the Applicants presently share this home with their sister who lives there full-time and the Property is where the entire family comes to when they visit the beach.
7. The Board found that Ms. Peet stated that the Property cannot be re-subdivided without the variances as the existing structures would not comply with the Sussex County Zoning Code.

8. The Board found that Ms. Peet stated that there is a cul-de-sac along the front property line which created a shift and resulted in the placement of these structures closer to the front property line.
9. The Board found that Ms. Peet stated that the Property consists of a single-family, one-story dwelling that was constructed in 1966 and the home is located on Lot 1. She noted that there is a shed that is located on Lot 2 that would need to be moved after the re-subdivision.
10. The Board found that Ms. Peet stated that the Property is unique because it was originally two (2) separate lots that were combined at some point prior to purchase by their family.
11. The Board found that Ms. Peet stated that this subdivision was approved in 1960 predating the enactment of the Zoning Ordinance and that, as a result of the subdivision predating the Zoning Ordinance, is that each lot is considered to be legally, non-conforming.
12. The Board found that Ms. Peet stated that the Property is located along a cul-de-sac which further limits the buildable area and increases the encroachments into the front yard setback.
13. The Board found that Ms. Peet stated that the existing condition has created an exceptional practical difficulty for the Applicants to re-subdivide their double lot for the purpose of constructing a single-family dwelling that would be in kind with other homes in the community.
14. The Board found that Ms. Peet stated that the Property cannot be developed in strict conformity within the provisions of the Code for the reasons stated and the variances from the front yard and side yard setbacks are necessary to re-subdivide the Property and to enable the reasonable use of Lots 1 and 2.
15. The Board found that Ms. Peet stated that the Applicants purchased the combined lots with the existing dwelling.
16. The Board found that Ms. Peet stated that the Property is located in the Agricultural Residential District in a community with existing dwellings located in the setbacks and lots that do not meet the minimum requirements.
17. The Board found that Ms. Peet stated that the variances requested are the minimum variances to afford relief.
18. The Board found that Ms. Peet stated that that the carport blends with the house very well but it is a separate structure technically.
19. The Board found that Ms. Turner Cox affirmed the statements made by Ms. Peet to be true and correct.
20. The Board found that Ms. Turner Cox testified that there is well and septic on the Property but County sewer has been approved. She noted that the septic is located behind the house, towards the lagoon, which is likely a reason the dwelling is closer to the front property line.
21. The Board found that Ms. Turner Cox testified that, when they bought the Property, the road was straight but, when the road was paved approximately 15 years ago, they made the cul-de-sac and the cul-de-sac made the front yard smaller.
22. The Board found that Ms. Turner Cox testified that, if there is a Nor'easter or something similar, there may be flooding in some areas.
23. The Board found that Ms. Turner Cox testified that the Applicants purchased the Property in 1998 and, at that time, New Castle Road was a gravel road.
24. The Board found that Ms. Turner Cox testified that they will be able to build on Lot 2 and that there have been houses built recently on similar lots that comply with the building restrictions. She noted that the Applicants have been looking at a smaller dwelling that is skinny to give more outside space and that, with the water to the back, they are looking to maintain a larger yard with a smaller house.
25. The Board found that Ms. Turner Cox testified that there is a homeowners association and they have obtained approval.

26. The Board found that no one appeared in support of or in opposition to the Application.
27. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, which the Board found credible, persuasive, and un rebutted, the Board determined that the application met the standards for granting a variance. The findings below further support the Board's decision to approve the Application with conditions.
 - a. The Property is unique due to its size, shape, and development. The Property consists of two lots which were created prior to the enactment of the Sussex County Zoning Code. Thereafter, a dwelling with steps and a carport were constructed on the Property. The Applicants seek to re-subdivide the Property to restore the original Lot 1 and Lot 2 but are unable to do so without variances for the existing dwelling, steps, and carport. The Property is located adjacent to a cul-de-sac and has an unusual shape. The Property is also small for a double lot as it consists of only 13,455 square feet. The rear of the Property is located adjacent to a lagoon and may experience flooding after large storms. These conditions result in a limited building envelope which is further limited by the location of a septic system to the rear of the existing dwelling. These unique characteristics of this Property have created an unnecessary hardship and exceptional practical difficulty for the Applicants who seek to retain the existing dwelling, carport, and steps on Lot 1.
 - 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 unique physical characteristics and the buildable area thereof is limited due to those characteristics. The Applicants seek to retain the existing dwelling, carport, and steps on Lot 1 but are unable to do so without violating the Sussex County Zoning Code. The Board is convinced that the variances are necessary to enable the reasonable use of the Property as the variances will allow these reasonably sized structures to remain on the Property and for the Property to be re-subdivided. The Board is convinced that the shape and location of the structures are also reasonable, which is confirmed when reviewing the survey provided by the Applicants. The Board notes that there are no additions to the structures that have existed in these locations since the 1960s.
 - d. The unnecessary hardship and exceptional practical difficulty were not created by the Applicants. 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 variances 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 structures will have no effect on the character of the neighborhood. The structures have been in their present location for many years and no complaints were noted in the record. The Board notes that no letters in opposition or testimony in opposition were presented to the Board. Rather, the Applicants testified that the homeowners association has approved the request.
 - f. The variances sought are the minimum variances necessary to afford relief and the variances requested represent the least modifications possible of the regulations at issue. The Applicants have demonstrated that the

variances sought will allow the Applicants to retain the existing dwelling, carport, and steps on Lot 1. No additions or modifications to those structures are proposed. The Board also notes that the Applicants intend to remove or relocate the existing shed on Lot 2 to bring Lot 2 into compliance with the Sussex County Zoning Code after the re-subdivision.

- 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 were Dr. Kevin Carson, Mr. Jeffrey Chorman, Mr. Travis Hastings, Mr. Jordan Warfel, and Mr. John Williamson. No Board Member voted against the Motion to approve the variance application.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY



Jeffrey Chorman
Chair

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

Date January 9, 2023.