

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: CHRISTOPHER SMITH & LISA SMITH

(Case No. 12770)

A public hearing was held after due notice on December 12, 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 a variance from the front yard setback requirement for a proposed addition.

Findings of Fact

The Board found that the Applicants are requesting a variance of 10 feet from the thirty (30) feet front yard setback requirement for a proposed addition. This application pertains to certain real property located on the southeast side of South Seaview Drive within the Seabreak Subdivision (911 Address: 31719 South Seaview Drive); said property being identified as Sussex County Tax Map Parcel Number 134-13.00-1143.00 ("the Property"). After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, aerial photographs of the Property, a survey of the Property dated April 21, 2022, a certificate of approval of a variance from the Seabreak Homeowners Association, 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 found that Lisa Smith was sworn in to give testimony about the Application. James Fuqua, Esquire, presented the Application on behalf of the Applicants.
4. The Board found that Mr. Fuqua stated that the Application is for a 10 feet front yard variance for an addition to an existing dwelling which is located on Lot 44 in the Seabreak development on Route 1 just north of Bethany Beach. He noted that the Applicants purchased this home in 2017 and did extensive renovations and that the Applicants have owned another home in Seabreak since 1997.
5. The Board found that Mr. Fuqua stated that the Applicants are proposing to build a 16 feet by 14 feet addition to the house on the front corner.
6. The Board found that Mr. Fuqua stated that the Applicants recently became grandparents for the first time and are planning to add some additional bedrooms for their extended family and guests.
7. The Board found that Mr. Fuqua stated that there is a unique physical condition peculiar to the Property that results in an exceptional practical difficulty.
8. The Board found that Mr. Fuqua stated that the Smiths' house is the next to last house on the east side of Seaview Drive and their property partially fronts on the cul-de-sac which is a typical circular paved cul-de-sac.
9. The Board found that Mr. Fuqua stated that, unlike the vast majority of cul-de-sacs, this one is rectangular and only fronts on the Smiths' side of the road. He noted that the rectangular cul-de-sac actually splits the Smiths' lot, resulting in 34 feet of frontage on the north side of the Property and a depth of 129.5 feet on the north side while the south side of the lot has 29 feet of frontage and a depth of 114 feet.

10. The Board found that Mr. Fuqua stated that the addition would actually be set back 38 or 39 feet which is in excess of the 30 feet setback requirement were it not for the rectangular cul-de-sac.
11. The Board found that Mr. Fuqua stated that this cul-de-sac only exists on paper and not in the field.
12. The Board found that Mr. Fuqua stated that the south corner of the addition would have a 20 feet setback from its closest point which is where the 10 feet variance request comes from.
13. The Board found that Mr. Fuqua stated that Exhibit 4 is a survey of the Property but with notations portraying a typical cul-de-sac which shows that there would be no need for variance were it a standard curved, cul-de-sac.
14. The Board found that Mr. Fuqua stated that a portion of the cul-de-sac is, in reality, part of the paved driveway.
15. The Board found that Mr. Fuqua stated that the house to the north of the Smiths' property is much closer to the road and the proposed addition will not project as far out into the front yard setback as the neighbor's house.
16. The Board found that Mr. Fuqua stated that Seabreak has the same restrictive covenant of 30 feet for the front yard setback requirement and the Seabreak Home Owners Association approved a 10 feet front yard variance for the proposed addition, which is the same variance the Applicants seek from the Board.
17. The Board found that Mr. Fuqua stated that he believes the record establishes the legal criteria for the variance has been met.
18. The Board found that Mr. Fuqua stated that the lot is unique because of the rectangular cul-de-sac.
19. The Board found that Mr. Fuqua stated that the addition cannot be built without the requested variance.
20. The Board found that Mr. Fuqua stated that the difficulty was not created by the Applicants but was created when the cul-de-sac was laid out as part of the subdivision.
21. The Board found that Mr. Fuqua stated that the variance will not alter the essential character of the neighborhood as evidenced by the fact that the homeowners association approved the same variance request.
22. The Board found that Mr. Fuqua stated that this request is the minimum variance request to afford relief.
23. The Board found that Mr. Fuqua stated that, if the cul-de-sac was not rectangular, there would be no need for variance.
24. The Board found that Mr. Fuqua stated that there are no steps or anything coming off the addition and the Applicants will be using the main entrance to the dwelling.
25. The Board found that Mr. Fuqua stated that the proposed circular cul-de-sac was done as an average typical sized cul-de-sac and created by the architect. He noted that the triangular part of the cul-de-sac noted on the drawing is part of the Smiths' driveway.
26. The Board found that Mr. Fuqua stated that, even though the cul-de-sac has not been fully paved, there is still enough room for emergency vehicles to turn around.
27. The Board found that Mr. Fuqua stated that all of the other houses on the street meet the setbacks but are closer to the street than the Smiths' house.
28. The Board found that Mr. Fuqua stated that the addition is going to be two (2) bedrooms to be used as a room for the grandchild and a play room or guest room. He noted that, when you live at the beach, you get a lot of guests at your house.
29. The Board found that Mr. Fuqua stated that the cul-de-sac is paved and maintained by the homeowners association but the corner piece is part of the Applicants' driveway and is maintained by them.

30. The Board found that Ms. Smith testified that all the statements of Mr. Fuqua are true and correct to the best of her knowledge. She also noted that there are no additional steps which will protrude off the addition into the front yard.
31. The Board found that no one appeared in support of or in opposition to the Application.
32. 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.
 - a. The Property is unique due to its shape and development. The Property was developed with a house by a prior owner and the Applicants seek to construct a reasonable addition to accommodate their family. The Property is adjacent to a cul-de-sac which is rectangular in shape but has only been developed as a circular cul-de-sac. Consequently, a portion of the "cul-de-sac" is actually maintained by the Applicants as part of their driveway. The odd shape of the cul-de-sac has created an odd shape to the Property where the north side is deeper than the south side. As a result, the building envelope is greatly limited. The Applicants intend to construct an addition to the front of the dwelling on the north side but the corner of the addition will encroach into the setback area. The house was placed on the lot by a prior owner and the Applicants are limited in where the addition can be made due to the existing development of the lot. The unique characteristics of this Property have created a limited building envelope and have created an unnecessary hardship and exceptional practical difficulty for the Applicants who seek to make reasonable improvements to the home by constructing an addition.
 - 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 seeks to construct reasonable improvements on the lot 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 the Applicants to construct a reasonable addition to the dwelling. The Board is convinced that the shape and location of these structures are also reasonable, which is confirmed when reviewing the survey provided by the Applicants.
 - 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 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. No substantial evidence that the addition would somehow alter the essential character of the neighborhood was presented to the Board. The homeowners association has approved the variance request and there were no objections noted in the record about the addition. The Board notes that neighboring homes are located closer to Seaview Drive

than the proposed addition and that the addition will be set back 30 feet from the actual paving of the cul-de-sac. There is a gap between the paved portion of the cul-de-sac and the front property line so, as a result, the encroachment into the front yard setback area is likely not as noticeable as they would otherwise be if the cul-de-sac was paved to the property line.

- 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 Applicants have demonstrated that the variance sought will allow the Applicants to make reasonable improvements on the Property as proposed. The Board is convinced that the Applicants explored other options for the size, shape, and location of the addition but were constrained by the conditions of the lot. The Board notes that the proposed addition will allow the Applicants to better accommodate their growing family.
- 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 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 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 February 6, 2023.