

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: DIANE W. MCCONNELL

(Case No. 12422)

A hearing was held after due notice on March 2, 2020. The Board members present were: Dr. Kevin Carson, Mr. Jeff Chorman, Ms. Ellen Magee, Mr. John Williamson, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for variances from the front yard setback requirements for an existing structure and a special use exception for a tourist home.

Findings of Fact

The Board found that the Applicant is requesting a variance of 8.4 feet from the forty (40) feet front yard setback requirement for an existing garage and a special use exception to operate a tourist home. This application pertains to certain real property located on the west side of Shore Drive approximately .55 miles north of Prime Hook Road (911 Address: 9026 Shore Drive, Milford); said property being identified as Sussex County Tax Map Parcel Number 2-30-17.00-218.06. After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, an aerial photograph of the Property, a survey of the Property dated May 26, 2006, and a portion of the tax map of the area.
2. The Board found that the Office of Planning & Zoning received six letters in support of and no correspondence in opposition to the Application.
3. The Board found that Diane McConnell was sworn in to give testimony about the Application.
4. The Board found that Ms. McConnell testified that the structure was on the Property when she purchased the Property in 2006. The Applicant also owns the adjacent lot, which was purchased at the same time. According to Ms. McConnell the two lots are separate and always have been separate.
5. The Board found that Ms. McConnell testified that she operates an Air BnB rental on the site for part of the year. She rents out the house during the summer months and lives there the rest of the year. Ms. McConnell testified that she does not rent out the house by the room and she does not stay in the house when it is rented.
6. The Board found that Ms. McConnell testified that, to meet the current setback requirements, the structure would have to be demolished.
7. The Board found that Ms. McConnell testified that the building existed when the Applicant purchased the Property in 2006 so she did not create the exceptional practical difficulty.
8. The Board found that Ms. McConnell testified that many of the houses in the neighborhood have similar setbacks so granting this variance would not affect the essential character of the neighborhood.
9. The Board found that Ms. McConnell testified that 4-5 houses in the area have the same setback.
10. The Board found that Ms. McConnell testified that there is a wildlife refuge nearby.
11. The Board found that Ms. McConnell testified that the variance requested is the minimum setback request to afford relief and allow the current dwelling to remain in its current location.

12. The Board found that Ms. McConnell testified that the house was built prior to 1975 but she is not sure when the garage was built.
13. The Board found that Ms. McConnell testified that the rear yard floods and part of the rear yard is likely always submerged.
14. The Board found that Ms. McConnell testified that she thinks the house needs to be elevated 10 feet and she cannot move the house to the rear yard.
15. The Board found that Ms. McConnell testified that she will have to elevate the dwelling to the base flood level and she is considering having the steps under the home so they will not project farther into the setbacks.
16. The Board found that Ms. McConnell testified that she is unsure of the distance between the edge of paving and her property line.
17. The Board found that Ms. McConnell testified that there is gravel and a fence in front of the property and there is space between the property line, the fence, and the road.
18. The Board found that Donald Shalhoub, who lives across the street from the Property, was sworn in to give testimony in support of the Application.
19. The Board found that Mr. Shalhoub testified that the variance does not alter the essential character of the neighborhood as the houses all seem to line up so the setback violation is negligible.
20. The Board found that one person appeared in support of the Application and no one appeared in opposition.
21. 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 variance application.
 - a. The Property is unique due to the flooding of the rear yard and the Property's historical use. The Property has long been improved by a structure which is located closer to the front yard than is allowed by Code. The Applicant seeks to retain the structure but is unable to do so without violating the Code. The Property cannot be moved to the rear yard due to the flooding issues. As a result, the Property has a limited building envelope. These conditions have created an unnecessary hardship and exceptional practical difficulty for the Applicant who seeks to retain the existing structure 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 Property and the situation, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Applicant seeks to retain the existing structure on the lot but is unable to do so while complying with the Sussex County Zoning Code. The Board is thus convinced that the variance is necessary to enable the reasonable use of the Property as the variance will allow the Applicant to retain the reasonably sized structure on the lot. The Board is convinced that the size, shape, and location of the structure are reasonable.
 - d. The unnecessary hardship and exceptional practical difficulty were not created by the Applicant. As discussed above, the Property has unique conditions which have limited the Applicant's ability to reasonably develop the Property. The Applicant did not create the unique conditions of the lot or construct the original structure. The Board was convinced that the Applicant has not created the exceptional practical difficulty and unnecessary hardship. Furthermore, the Board is convinced that the Applicant did not come to the Property with an illegal use in mind. Rather, the Applicant is limited by the physical conditions of the Property and the prior development thereof and the Applicant needs the variance in order to

reasonably develop the Property as proposed and to retain the existing structure.

- 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 variance will have no effect on the character of the neighborhood. The variance will allow the existing structure to remain in its current location. There were no complaints about the location of the structure. Rather, the Board received letters and testimony supporting the Application. The Board also notes that there is a gap between the edge of paving of the road and the front property line so the Property appears larger than it actually is. Lastly, the Board finds that no evidence was presented which demonstrate that the variance would somehow alter the essential character of the neighborhood or be detrimental to the public welfare.
- f. The variance sought is the minimum variance necessary to afford relief and the variance requested represent the least modification possible of the regulation at issue. The Applicant has demonstrated that the variance sought will allow the Applicant to retain the existing structure on the Property.
- 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.
- h. The Board notes that this approval shall also apply to the structure if it is elevated as proposed by the Applicant. The Property is in a flood zone and the structure likely needs to be elevated above the flood zone.

22. 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 for the special use exception failed to meet the standards for granting a special use exception. The findings below further support the Board's decision to deny the special use exception application.

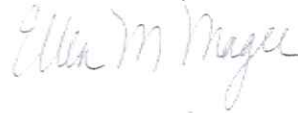
- a. The Applicant applied for a special use exception for a tourist house. Under §115-4 of the Sussex County Zoning Code, a tourist house is defined as “[a] dwelling having not more than six rental rooms for guests. No cooking facilities shall be permitted in individual rental rooms.”
- b. In this case, the Applicant is not renting out individual rooms. Rather, she is renting out the entire house to tenants; albeit on a short-term basis. This use is not a tourist home under the Code's definition. As such, the request for the special use exception for a tourist home is denied.

The Board granted the variance application finding that it met the standards for granting a variance but the Board denied the special use exception application finding that it failed to meet the standards for granting a special use exception.

Decision of the Board

Upon motion duly made and seconded, the variance application was approved and the special use exception application was denied. The Board Members in favor of the motion were Dr. Kevin Carson, Mr. Jeffrey Chorman, Ms. Ellen Magee, Mr. Brent Workman, and Mr. John Williamson. No Board Member voted against the motion to approve variance and to deny the special use exception application.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY



Ellen M. Magee
Chair

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

Date May 5, 2020