

**BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY**

**IN RE: ROLLIN BELL & LISA BELL**

**(Case No. 12425)**

A hearing was held after due notice on March 16, 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, corner front, and side yard setback requirements for proposed and existing structures.

Findings of Fact

The Board found that the Applicants are requesting the following variances: 1) a variance of 5.34 feet from the ten (10) feet front yard setback requirement along Pierce Avenue for a proposed elevator and balcony; 2) a variance of 0.3 feet from the fifteen (15) feet corner front yard setback requirement along Beach Avenue for the existing dwelling; and 3) a variance of 0.31 feet from the ten (10) feet front yard setback requirement along Pierce Avenue for the existing dwelling. This application pertains to certain real property located on the corner of Beach Avenue and Pierce Avenue approximately 818 feet east of Coastal Highway (Route 1) (911 Address: 2 Beach Avenue, Rehoboth Beach); said property being identified as Sussex County Tax Map Parcel Number 3-34-23.06-93.00. After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a deed to the Property, a topographical survey dated December 2, 2019, a memorandum from DNREC with materials related to the DNREC application, drawings, a foundation plan, architectural plans, an aerial photograph of the Property, minutes of the January 4, 2006 Planning & Zoning Commission meeting, and a portion of the tax map of the area.
2. The Board notes that the Planning & Zoning Commission previously determined that the Atlantic Ocean side of the Property was considered a front yard and that the Pierce Avenue side of the Property was subject to a 10 foot setback requirement. The Pierce Avenue side of the Property is also considered a front yard. The Beach Avenue side of the Property is considered a corner front yard.
3. The Board found that the Office of Planning & Zoning received no correspondence in support of or in opposition to the Application.
4. The Board found that Rollin Bell was sworn in to give testimony about the Application. Mackenzie Peet, Esquire, appeared on behalf of the Applicants and presented the Application.
5. The Board found that Ms. Peet stated that the shape of the lot is unique and is subject to a DNREC building line restriction. According to Ms. Peet, the DNREC building limit line affects the placement of the building and the proposed elevator.
6. The Board found that Ms. Peet stated that, due to the DNREC building regulations, there is no possibility that the dwelling can be built in strict conformity with Sussex County Code. She argued that most of the yard is unbuildable due to the DNREC restrictions.
7. The Board found that Ms. Peet stated that the dwelling was constructed by a prior owner and there is nowhere else to place the elevator.
8. The Board found that Ms. Peet stated that the exceptional practical difficulty was not caused by the Applicants but by the unique building restrictions on the lot.

9. The Board found that Ms. Peet stated that the request to build the elevator is because the Applicants wish to make access to the dwelling easier for their elderly parents to move around the house.
10. The Board found that Ms. Peet stated that the Applicants also have approval from DNREC.
11. The Board found that Ms. Peet stated that the variances will not alter the essential character of the neighborhood as there are similar houses in the neighborhood.
12. The Board found that Ms. Peet stated that the Applicants purchased the Property in 2005.
13. The Board found that Ms. Peet stated that there is no impact on visibility of adjacent roads.
14. The Board found that Ms. Peet stated that the variances requested are the minimum variances necessary to afford relief.
15. The Board found that Mr. Bell affirmed the statements made by Ms. Peet as true and correct.
16. The Board found that Mr. Bell testified that he discussed the Application with his neighbors and that there have been no complaints about the structures.
17. The Board found that no one appeared in support of or in opposition to the Application and no additional comments were submitted electronically.
18. 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 unrebutted, 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 as it is a long, narrow lot subject to significant DNREC building restrictions. The Property is adjacent to beaches of the Atlantic Ocean and much of the easterly side of the lot is undevelopable due to the DNREC building restrictions. As such, the building is pushed towards the western side of the Property adjacent to Pierce Avenue. The house which was built many years ago, slightly encroaches into that setback area. The Applicants need to construct an elevator and balcony for their elderly relatives but are unable to do so within the building envelope. The Property's unique conditions have thus created an unnecessary hardship and exceptional practical difficulty for the Applicants who seek to retain the existing dwelling on the lot and to make a reasonable addition for the elevator and balcony.
  - 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 Applicants seek to retain the existing dwelling on the lot and to construct the elevator and balcony but are unable to do so while complying with the Sussex County Zoning Code. The Board is thus convinced that the variances are necessary to enable the reasonable use of the Property as the variances will allow the Applicants to retain the reasonably sized dwelling and to construct the elevator and balcony on the lot. The Board is convinced that the size, shape, and location of the structures are reasonable.
  - d. The unnecessary hardship and exceptional practical difficulty were not created by the Applicants. As discussed above, the Property has unique conditions which have limited the Applicants' ability to reasonably develop the Property. The Applicants did not create the unique conditions of the lot or construct the original house. The Board was convinced that the Applicants have not created the exceptional practical difficulty and

unnecessary hardship. Furthermore, the Board is convinced that the Applicants did not come to the Property with an illegal use in mind. Rather, the Applicants are limited by the physical conditions of the Property and the prior development thereof and the Applicants need the variances in order to reasonably develop the Property as proposed and to retain the existing dwelling.

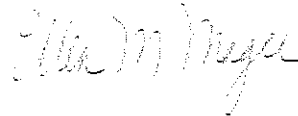
- e. The variances will not alter the essential character of the neighborhood nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare. The Board is convinced that the variances will have no effect on the character of the neighborhood. The variances will allow the existing dwelling to remain in its current location. There were no complaints about the location of the structure and, since the encroachments for the existing dwelling are less than 1 foot, it is unlikely that those encroachments are even noticeable without a survey. Likewise, there was no objection to the proposed addition and no evidence was presented which demonstrate that the variances would somehow alter the essential character of the neighborhood or be detrimental to the public welfare.
- 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 on the Property and to build a reasonably sized elevator and balcony to accommodate elderly family members.
- 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, Ms. Ellen Magee, Mr. John Williamson, and Mr. Brent Workman. No Board Member voted against the motion to approve 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.