

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: BARBARA WALKER

(Case No. 12432)

A hearing was held after due notice on June 1, 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 requirement for an existing dwelling.

Findings of Fact

The Board found that the Applicant is seeking a variance of 4.5 feet from the thirty (30) feet front yard setback requirement for an existing dwelling. This application pertains to certain real property located on the southwest corner of White Oak Road within the Rehoboth Beach Yacht and Country Club subdivision (911 Address: 30 White Oak Road, Rehoboth Beach); said property being identified as Sussex County Tax Map Parcel Number 3-34-19.00-73.00. 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 January 31, 2020, a building permit, findings of fact for Case No. 2192-1982, 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 a variance of 5 feet was granted from the front yard setback in 1982 for a proposed dwelling but no certificate of compliance was issued after the house was built.
4. The Board found that Barbara Walker and Adam Linder were sworn in to give testimony about the Application.
5. The Board found that Mr. Linder testified that the Applicant wishes to sell the home and she was unaware of any violations until the Property was surveyed.
6. The Board found that Mr. Linder testified that the Rehoboth Beach Yacht and Country Club subdivision had a 25 foot setback.
7. The Board found that Mr. Linder testified that the dwelling has been on the Property since 1982/83 and has had no complaints.
8. The Board found that Mr. Linder testified that the dwelling is in character with the neighborhood.
9. The Board found that Ms. Walker testified that she inherited the Property two years ago and that the Property was built by the McCauleys who were the original owners and who lived in the home for 37 years.
10. The Board found that Ms. Walker testified that the prior owners lived in Egypt for approximately 1 year after the house was built.
11. The Board found that Ms. Walker testified that other lots in the neighborhood are square or rectangular.
12. The Board found that Ms. Walker testified that there have been no complaints about the location of the house.
13. The Board found that no one appeared in support of or opposition to the Application.
14. 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 the size and shape of the lot. The front property line is curved and the lot is not exceptionally large. These conditions have created an unusually shaped and limited building envelope. The Property was developed by a house in the 1980s after the issuance of a variance. No certificate of compliance was issued, however, after the house was constructed. The Board notes that the prior owners lived abroad for approximately 1 year after the house was constructed and their absence likely resulted in the failure to complete the appropriate paperwork to demonstrate that the dwelling was constructed in compliance with the prior variance approval and the Code. The Board notes that the existing dwelling complies with the prior variance approval. The unique conditions of the lot and the prior construction of the house have created an unnecessary hardship and exceptional practical difficulty for the Applicant who seeks to retain the existing dwelling 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 dwelling 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 dwelling on the lot. The Board is convinced that the size, shape, and location of the dwelling 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 house. 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 variances in order to retain the existing dwelling.
- 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 dwelling to remain in its current location. There were no complaints about the location of the dwelling. 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 represents 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 dwelling on the Property. No additions or modifications to the dwelling are proposed.
- 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

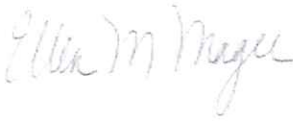
practicable the formulation of a general regulation to be adopted as an amendment to the Sussex County Zoning Code.

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. Brent Workman, and Mr. John Williamson. 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 July 7, 2020.