

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: EILEEN ANDREWS & CHRIS ANDREWS

(Case No. 12474)

A hearing was held after due notice on October 19, 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 proposed structures.

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 porch and a variance of 8 feet from the thirty (30) feet front yard setback requirement for a proposed set of steps. For purposes of this application, Carla Avenue is considered the front yard. This application pertains to certain real property that is located on the north side of Carla Avenue at the intersection of Carla Avenue and Dodd Avenue in the Seabreeze subdivision (911 Address: 301 Carla Avenue, Rehoboth Beach); said property being identified as Sussex County Tax Map Parcel Number 3-34-20.13-85.00. After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, letters from Brian DeMott, Esquire, a survey of the Property dated May 7, 2015, drawings of the proposed structures, a letter from the Seabreeze Homeowners Association, letters and emails in support of the Application, a survey of the Property dated September 10, 2020, 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 nine letters in support of and no correspondence in opposition to the Application.
3. The Board found that Eileen Andrews and Chris Andrews were sworn in to give testimony about the Application. Brian DeMott, Esquire, presented the Application on behalf of the Applicants.
4. The Board found that Mr. DeMott stated that the Property is unique in shape as it is a corner lot in a subdivision with an odd angle.
5. The Board found that Mr. DeMott stated that there is a strip of land between the Applicants' property line and the edge of paving of the nearby streets and that those streets are owned by the homeowners association.
6. The Board found that Mr. DeMott stated that a variance from the homeowners association has been obtained.
7. The Board found that Mr. DeMott stated that the existing structure does not comply and the Applicants propose to tear down that structure and replace it with a new home.
8. The Board found that Mr. DeMott stated that the Applicants purchased the Property in May 2015 and the Applicants did not create the unusual lot.
9. The Board found that Mr. DeMott stated that the Applicants did not build the existing house either.
10. The Board found that Mr. DeMott stated that the neighbors are supportive of the variance requests.
11. The Board found that Mr. DeMott stated that the variances will not alter the essential character of the neighborhood as the Property is located in the medium residential zoning district and will be used for a single-family home which matches other homes in the area.

12. The Board found that Mr. DeMott stated that the variances requested are the minimum variances to afford relief to allow the Applicants to build their retirement home.
13. The Board found that Mr. DeMott stated that the variances will not impair views for motorists.
14. The Board found that Mr. Andrews testified that the house cannot be placed elsewhere on the Property as it would create a larger variance request and that the house cannot be rotated either.
15. The Board found that Mr. Andrews testified that the house will measure 64 feet wide by 39.6 feet deep and will have a Cape Cod design with an unfinished second floor.
16. The Board found that Mr. Andrews testified that the house will consist of approximately 2,200 square feet and the existing dwelling consists of approximately 1,600 square feet and is two stories.
17. The Board found that Mr. Andrews testified that the lot consists of 7,766 square feet.
18. The Board found that Mr. Andrews affirmed the statements made by Mr. DeMott as true and correct.
19. The Board found that Mr. DeMott stated that the HVAC will measure approximately 3 feet by 3 feet and will be located to the rear of the house and that no variance will be needed for the HVAC.
20. The Board found that Mr. Andrews testified that other models were researched but this model dwelling is the one which will fit the needs of the Applicants and that house design was changed to make it smaller.
21. The Board found that Mr. Andrews testified that the existing home cannot be remodeled as there is extensive termite damage and wiring which is not up to code. As such, according to Mr. Andrews, the existing house needs to be torn down.
22. The Board found that Mr. Andrews testified that the house will be 30 feet from the front property line but variances are needed for the porch and steps.
23. The Board found that Mr. Jonathan Skolnik attended by teleconference and was sworn in to give testimony in opposition to the Application. Mr. Skolnik, who lives near the Property, testified that he has concerns including about the size of the house and that he disfavors larger homes in the area.
24. The Board found that Mr. Andrews testified that will be his retirement home and will not be an AirBnB rental.
25. The Board found that no one appeared in support of and one person appeared in opposition to the Application.
26. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, which the Board weighed and considered, 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 its small size and odd shape. The Property consists of only 7,766 square feet and the east side of the Property has a unique angle. These conditions limit the building envelope and the building envelope is further restricted since the Property is a corner lot. The lot was created prior to the enactment of the Sussex County Zoning Code and the house needs to be replaced due termite damage and wiring issues. The Property is also located in a community which predates the enactment of the Sussex County Zoning Code. The Applicants now seek to replace the home and to construct a new porch and steps but are restricted by the unique conditions of the lot. These conditions are unique and have created an exceptional practical difficulty and unnecessary hardship for the Applicants who seek to construct a new porch and steps on the Property.
 - 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 conditions which limit the developable options for the home, porch, and steps. The Applicants seek to construct a new dwelling with a porch and steps 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 these structures on the site. 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. The Applicants did not create the unusual conditions of the Property. These conditions have resulted in a limited development options for the Applicants and have created the exceptional practical difficulty and unnecessary hardship. The unique characteristics of the Property are clear when reviewing the survey. The Board is convinced that the unnecessary hardship and exceptional practical difficulty were not created by the Applicants but were created by the lot's unique characteristics.
- 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. A similar structure has been on the Property for many years and no objections were noted in the record. Rather, the Board has received evidence of support from neighbors for the proposal. There was no substantial evidence as to why the variances for these structures would alter the alter the essential character of the neighborhood. Furthermore, there is a gap between the edge of paving of Carla Avenue and the front property line so the front yard encroachments will likely not be as noticeable.
- 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 them to construct a new house with porch and steps. The structures are reasonable in size. The Applicants are limited by the Property's unique conditions but the location of these structures minimizes the need to further encroach into the setback areas. The Board notes that the house will comply with the setback requirements and that the Applicants have also designed the house so that the HVAC system will comply with the setback requirements as well. The only encroaching structures are the porch and steps. It is clear to the Board that the Applicants have taken appropriate measures to limit the encroachments while still designing a house to afford them with reasonable use of 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.

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, Ms. Ellen Magee, Mr. John Williamson, and Mr. Brent Workman. No Board Member voted against the Motion to approve the variance 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 December 21, 2020.