

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: PEGGY A. BEERS

(Case No. 12482)

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 and corner front yard setback requirements for proposed structures.

Findings of Fact

The Board found that the Applicant is requesting a variance of 10.3 feet from the thirty (30) feet front yard setback requirement for a proposed dwelling, a variance of 14.1 feet from the thirty (30) feet front yard setback requirement for a proposed set of steps, and a variance of 8.1 feet from the fifteen (15) feet corner front yard setback requirement for a proposed dwelling. This application pertains to certain real property located on the northwest corner of North Bayshore Drive and South Carolina Avenue (911 Address: 602 North Bayshore Drive, Milton); said property being identified as Sussex County Tax Map Parcel Number 2-35-3.16-81.00. After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, pictures of the Property, property record information, a petition supporting the application, a survey of the Property dated June 29, 2020, an aerial photograph, and a portion of the tax map of the area.
2. The Board found that the Office of Planning & Zoning a petition of eight signatures in support of and no letters in opposition to the Application.
3. The Board found that Peggy Beers and John Roach were sworn in to give testimony about the Application. Mr. Roach is the Applicant's surveyor.
4. The Board found that Mr. Roach testified that the existing porch and house are located in the corner front yard and that the house was constructed in the 1950s prior to the enactment of the Sussex County Zoning Code.
5. The Board found that Mr. Roach testified that the Applicant wishes to improve the house by adding two additional floors and by raising the house above the flood plain. The dwelling will require a new foundation.
6. The Board found that Mr. Roach testified that the Property is unique as it is a corner lot.
7. The Board found that Mr. Roach testified that the house cannot be improved with two additional floors without the variances.
8. The Board found that Mr. Roach testified that the exceptional practical difficulty was not created by the Applicant as the dwelling was built prior to zoning code.
9. The Board found that Mr. Roach testified that the variances will not alter the essential character of the neighborhood as this is a beach house in a beach community.
10. The Board found that Mr. Roach testified that the house will remain in its existing location and the variances are the minimum variances to allow for additional floors.
11. The Board found that Mr. Roach testified that the location of the septic field impedes the dwelling from being moved farther back on the Property and that the drain field is near the rear shed.

12. The Board found that Mr. Roach testified that there is approximately 5 – 8 feet between the property line and the edge of paving.
13. The Board found that Mr. Roach testified that the variances will pose no visibility issues.
14. The Board found that Ms. Beers testified that she has lived on South Carolina Avenue for 47 years and that the house was built in the 1950s.
15. The Board found that Ms. Beers testified that they will not be adding to the non-conformity of the existing dwelling as they are only adding floors to the existing dwelling.
16. The Board found that Ms. Beers testified that the block shed that is on the property is non-conforming and has been in place for approximately 48 years. The shed is a concrete block shed and cannot be moved.
17. The Board found that Ms. Beers testified that there have been no complaints from neighbors.
18. The Board found that one person appeared in support of and no parties appeared in opposition to the Application.
19. 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 as it is a small lot measuring only 5,000 square feet and the house needs to be elevated due to flood plain regulations. Furthermore, the Property is improved with a septic system which limits the developable area of the lot. Additionally, the Property is a corner lot with enhanced setback requirements and the Applicant cannot take advantage of the small lot ordinance on that side since it is a corner lot. These unique conditions have created a small and limited building envelope. The Property's unique conditions have thus created an unnecessary hardship and exceptional practical difficulty for the Applicant who seeks to construct a new dwelling and steps.
 - 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 construct a new dwelling steps but is 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 variance will allow the Applicant to construct a new dwelling with steps 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 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 and the Applicant has designed a reasonably sized house to fit on the lot but cannot comply with the setback requirements due to the lot's unique conditions. 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 Applicant needs the variances in order to reasonably develop the Property as proposed.

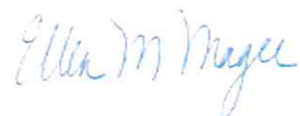
- e. The variances will not alter the essential character of the neighborhood nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare. The Board is convinced that the variances will have no effect on the character of the neighborhood. The variances will allow the Applicant to remodel and elevate an older home and to construct new steps. Neighbors have indicated support for the application 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. The Board also notes that the house will be in the same location as the existing house and there were no complaints in the record about the location of the existing house.
- 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 Applicant has demonstrated that the variances sought will allow the Applicant to construct a new dwelling with steps as proposed. The Board notes that the house will not encroach farther than the existing house and the Applicant has designed the HVAC system to comply with the setback requirements. The Board also notes that the Applicant must elevate the house due to flood plain requirements and is limited by the unique conditions of the lot.
- 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 December 21, 2020