

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: JOHN YOST AND CATHERINE YOST (Case No. 10928)

A hearing was held after due notice on January 23, 2012. The Board members present were: Mr. Dale Callaway, Mr. Jeff Hudson, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman.

Nature of the Proceedings

This is an application appealing a decision of Lawrence Lank, the Director of the Sussex County Planning & Zoning Department.

Findings of Fact

The Board found that the Applicants appealed a decision of Lawrence Lank, the Director of the Sussex County Planning & Zoning Department, that a certain lot as hereinafter described requires only a side yard setback instead of a corner yard setback because it lies adjacent to a "pedestrian access" rather than a "street". This appeal pertains to certain real property located east of Route 16 (Broadkill Road), east of Bayshore Drive, being Lot 9, Block A within Broadkill Beach development; said property being identified as Sussex County Tax Map Parcel Number 2-35-10.06-18.00. After a hearing, the Board made the following findings of fact:

1. Timothy Willard, Esquire, appeared on behalf of the Applicants. The Applicants, through counsel, submitted a letter in support of their Application to the Board prior to the hearing. The Applicants own property near the Property which is the subject of this appeal.
2. Glenn Mandalas, Esquire, appeared on behalf of Umberto Pomilio who owns the Property which is subject to this Application. Mr. Pomilio, through counsel, submitted to the Board a memorandum in support of the Director's decision prior to the hearing.
3. The Property subject to this Application has history before the Board of Adjustment.
4. On November 1, 2010, the Board heard an application (Case Number 10716) for a variance from the side yard setback filed by Mr. Pomilio for the Property. The Property is adjacent to a "paper road" shown on the Sussex County Tax Maps and the Planning & Zoning Department believed that this created a corner lot. The setback requirement for a corner lot is fifteen feet and the side yard setback requirement is ten feet. The dwelling encroached into the fifteen foot setback requirement but would meet the ten foot setback requirement.
5. After a public hearing, the Board granted Mr. Pomilio's variance application for the placement of a dwelling on the Property. The Applicants subsequently appealed that decision to the Superior Court and the decision was overturned.
6. After the Superior Court entered its decision, Mr. Lank discovered that the "paper road" was used for pedestrian access only and was not a road for vehicle use. Mr. Lank then notified Mr. Pomilio and the Applicant that a variance was not necessary because the Property was not a corner lot. The Applicants have subsequently appealed Mr. Lank's decision to the Board for review and consideration.
7. The Board found that the main issue on appeal was whether the twenty (20) foot wide access adjacent to the north side of the Property is a "street" or a "pedestrian access". If the access is considered a "street", then a corner lot setback requirement of fifteen (15) feet would apply and the Director's decision must be overturned. If the access is considered a "pedestrian access", then a side yard setback requirement of ten (10) feet would apply and the Director's decision must be upheld.

8. The Board found that Mr. Willard argued on behalf of the Applicants that the access in question constitutes a "street" thereby rendering the Property a corner lot where the fifteen (15) foot corner lot setback requirement would apply. Mr. Willard argued that there are similar access points every eight (8) blocks in the Broadkill Beach development to connect Bayshore Drive to the beach for the public. Mr. Willard further argued that there is no requirement that streets must be for vehicular purposes. He also claimed that there was precedence with Lot #37 in Broadkill Beach where the Planning & Zoning Office determined that a corner lot existed even though it abutted next to a walkway. Mr. Willard also submitted a photograph and stated that it clearly shows tire tracks on the access.
9. The Board found that Mr. Mandalas argued on behalf of Mr. Pomilio that the access in question constitutes a "pedestrian access" thereby requiring only a ten foot side yard setback on the Property. Mr. Mandalas argued that the access is used only for pedestrian access. He noted that the County Code requires a street to be fifty (50) feet wide and this access is only twenty (20) feet wide. He further argued that an alley is only required to be sixteen (16) feet wide and is dedicated to vehicular access but the County only requires a ten (10) foot setback requirement from alleys. He also argued that there is nothing at the Office of the Recorder of Deeds identifying the access as a street.
10. The Board found that Mr. Lank testified about his decision and referred the Board to a plot of Broadkill Beach which was recorded in the Office of the Recorder of Deeds in Plot Book 8, Page 87. In that plot, the access is referred to as a "pedestrian access". The Sussex County Tax Maps do not identify the access as a street, walkway, or pedestrian access. He advised the Board that there are approximately twenty (20) similar accesses to the waterfront in the County which vary from five (5) feet wide to twenty (20) feet wide. These are referred to as walkways or pedestrian accesses and none of the adjacent lots are required to have the fifteen (15) foot corner lot setback requirement. He stated that there are blocks designated on the original plot which are identified by the word "Block" followed by a letter of the alphabet (i.e. Block A, Block B, Block C, etc.) and those blocks are all bounded by streets. The Property subject to this Application is located in Block A and the lot on the other side of the access is also located in Block A. The composition of Block A would seem to support the opinion that the access is not a street.
11. The Board originally tabled the Application but rendered its decision at its meeting on February 6, 2012.
12. The Board found that Section 115-82(B) of the Sussex County Code provides that "[t]here shall be a front yard of at least 15 feet on the side street of a corner lot in any district."
13. The Board found that Section 115-4(B) of the Sussex County Code defines a corner lot as "[a] lot abutting upon two or more streets at their intersection."
14. The Board found that Section 115-4(B) of the Sussex County Code defines a street as "[a] public or private thoroughfare which affords the principal means of access to abutting properties and whether designated as 'freeway,' 'expressway,' 'highway,' 'road,' 'avenue,' 'boulevard,' 'lane,' 'place,' 'circle,' or however otherwise designated. The minimum width of a street right-of-way shall be 50 feet."
15. The Board found that the recorded plot for Broadkill Beach refers to the access as a "pedestrian access" and not as a "street".
16. The Board found that similar accesses in the County are not referred to as streets and adjacent lots do not require corner lot setbacks.
17. The Board found that the original plot for Broadkill Beach designates certain "blocks". Streets are located at the end of the blocks thereby marking the end of one block and the beginning of another block. The access adjacent to the

Property subject to this Application is located within a block of lots identified on the plot as Block A. The lots on both sides of the access are both located in Block A.

18. Based on the findings above, the testimony presented at the public hearing and the documents submitted to the Board and in the record, the Board decided to uphold the decision of Director that a side yard setback applies to the portion of the lot adjacent to the pedestrian beach access and that a corner lot setback is not required. The Board based its decision on the following reasons:
- a. The pedestrian beach access adjacent to the Pomilio property is not a "street" under the Sussex County Code.
 - b. Since the adjacent pedestrian beach access is not a "street", the Pomilio property cannot be considered a "corner lot."
 - c. And because the Pomilio property is not a corner lot, the applicable side yard setback is ten (10) feet and is not fifteen (15) feet.

The Board decided to uphold the Director's decision for the reasons stated herein.

Decision of the Board

Upon motion duly made and seconded, the application was granted. The Board Members in favor were Mr. Jeff Hudson, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman. No Member voted against the Application.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY



Dale Callaway
Chairman

If the use is not established within one (1) year from the date below the application becomes void.

Date March 22, 2012.