

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: PENN CENTRAL, LLC

(Case No. 11172)

A hearing was held after due notice on March 18, 2013. 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 for variances from the side yard and rear yard setback requirements.

Findings of Fact

The Board found that the Applicant was seeking a variance of 2 feet from the 15 feet side yard setback requirement for a proposed third floor deck on Unit 1, and a variance of 5 feet from the 10 feet rear yard setback requirement for a proposed third floor screen porch on Unit 1. The Applicant has requested that the aforementioned requested variances be granted as they pertain to certain real property located east of Route 1 (Ocean Highway) southeast corner of Bennett Road and Pennsylvania Avenue, being Lot 3, Block 1, within Sussex Shores development; said property being identified as Sussex County Tax Map Parcel Number 1-34-13.15-159.00. After a hearing, the Board made the following findings of fact:

1. The Board found that the Office of Planning and Zoning received a letter in support of the Application from Crowley Real Estate.
2. Carol Schultze was sworn in to testify on behalf of the Application.
3. The Board found that Ms. Schultze testified that the Board approved a previous variance on this property and that she should have asked for the variances for the proposed deck and porch at that time.
4. The Board found that Ms. Schultze testified that the proposed screen porch will provide protection from the sun, which is important since she has had skin cancer.
5. The Board found that Ms. Schultze testified that the proposed deck will provide a view of the ocean.
6. The Board found that Ms. Schultze testified that the lot is non-conforming and measures 73 feet by 110 feet.
7. The Board found that Ms. Schultze testified that the variances are necessary to enable reasonable use of the Property.
8. The Board found that Ms. Schultze testified that the difficulty was not created by the Applicant, since she did not subdivide the lot.
9. The Board found that Ms. Schultze testified that a deck on Unit 2 is not necessary since Unit 2 would not have a view of the ocean.
10. The Board found that Ms. Schultze testified that that the variance is needed for Unit 1 because she could not see the ocean without the variance
11. The Board found that Ms. Schultze testified that the dwelling has not yet been built.
12. The Board found that Ms. Schultze testified that the proposed structures meet the community setback requirements.
13. The Board found that Ms. Schultze testified that the variances will not alter the character of the neighborhood.
14. The Board found that Ms. Schultze testified that the variances requested represent the least modification of the regulations at issue and that the proposed variances will not impair the uses of neighboring properties.

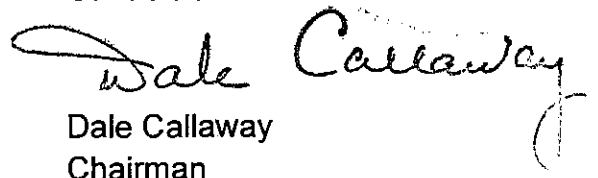
15. The Board found that Ms. Schultze testified that the variances are the minimum variances to necessary afford relief.
16. The Board found that Roderick Reese was sworn in and testified in opposition to the Application.
17. The Board found that Mr. Reese testified that he owns the adjacent property known as Lot 5 which he has owned since 1996.
18. The Board found that Mr. Reese testified that the porch variance will provide a direct view into his existing outdoor shower from the proposed deck.
19. The Board found that Mr. Reese testified that the Applicant is using the maximum allowable buildable space and the structure will be a big change to the character of the neighborhood.
20. The Board found that Mr. Reese testified that he was unable to attend the previous hearing.
21. The Board found that Mr. Reese testified that he could see the ocean if he stood on the highest peak of his roof and looked between two (2) other houses.
22. The Board found that no parties appeared in support of the Application.
23. The Board found that one (1) party appeared in opposition to the Application.
24. Based on the findings above and the testimony presented at the public hearing and the public record, the Board determined that the Application failed to meet the standards for granting a variance. The Property is not unique. The variances are not necessary to enable reasonable use of the Property. The difficulty has been created by the Applicant

The Board denied the variance application finding that it failed to meet the standards for granting a variance.

Decision of the Board

Upon motion duly made and seconded, the Application was denied. The Board Members voting to deny the Application were Mr. Dale Callaway, Mr. Jeff Hudson, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman. No Member voted against the Motion to Deny the Application.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY


Dale Callaway
Chairman

Date April 16, 2013