

**BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY**

**IN RE: JEFFREY S. BRYAN and MICHELLE V. BRYAN**

**(Case No. 11427)**

A hearing was held after due notice on August 4, 2014. 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 a variance from the front yard setback requirement.

Findings of Fact

The Board found that the Applicants were seeking a variance of 29.3 feet from the thirty (30) feet front yard setback requirement for existing steps, landing, deck, and dwelling. The Applicants have requested that the aforementioned requested variance be granted as it pertains to certain real property located on the south side of Palmer Avenue and 88 feet east of Route One (Coastal Highway) and south of Dewey Beach and being Lots 22 & 24 Block A within Rehoboth-Indian Beach (911 Address: 26 Palmer Avenue, Rehoboth Beach, Delaware); said property being identified as Sussex County Tax Map Parcel Number 3-34-23.06-101.00. After a hearing, the Board made the following findings of fact:

1. The Board found that the Office of Planning & Zoning received no correspondence regarding the Application.
2. Jeffrey Bryan was sworn in to testify on behalf of the Application and William Schab, Esquire, appeared on behalf of the Applicants.
3. The Board found that Mr. Schab submitted exhibits to the Board to review.
4. The Board found that Mr. Schab stated that the Applicants recently purchased the Property and that a survey completed for settlement showed the encroachment.
5. The Board found that Mr. Schab stated that the structures are less than one (1) foot from the front property line.
6. The Board found that Mr. Schab stated that the dwelling pre-dated the enactment of the Sussex County Zoning Code and that the dwelling originally sat on the ground a few blocks from the ocean.
7. The Board found that Mr. Schab stated that the previous owner purchased the Property in 1977.
8. The Board found that Mr. Schab stated that, in 1993, the dwelling was raised to comply with the flood zone requirements.
9. The Board found that Mr. Schab stated that the prior owner obtained building permits for raising the house and for the deck, landing, and steps.
10. The Board found that Mr. Schab stated that Palmer Avenue is seventy (70) feet wide but only ten (10) to twelve (12) feet of Palmer Avenue is paved.
11. The Board found that Mr. Schab stated that the steps and deck would have to be removed to bring the Property into compliance.
12. The Board found that Mr. Schab stated that the deck and steps are necessary to gain access to the dwelling.
13. The Board found that Mr. Schab stated that the other dwellings on Palmer Avenue are similarly situated in relation to Palmer Avenue.
14. The Board found that Mr. Schab stated that the Property is unique.
15. The Board found that Mr. Schab stated that the difficulty was not created by the Applicants.
16. The Board found that Mr. Schab stated that the variance requested is the minimum variance to afford relief.
17. The Board found that Mr. Schab stated that there will not be any adverse effect to the neighboring properties.

18. The Board found that Mr. Bryan, under oath, confirmed the statements made by Mr. Schab as being true and correct.
19. The Board found that Mr. Bryan testified that he would not be able to access the dwelling without the steps, deck and landing.
20. The Board found that Mr. Bryan testified that he has contacted the Homeowners Association in reference to the Application and that the Homeowners Association is aware that there will be no structural changes.
21. The Board found that Mr. Bryan testified that he intends to keep the dwelling and structures in their current location.
22. The Board found that Mr. Bryan testified that he is unaware of any plans by the Department of Transportation ("DelDOT") to expand Palmer Avenue.
23. The Board found that no parties appeared in support of or in opposition to the Application.
24. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, the Board determined that the Application met the standards for granting a variance. The Property is unique. The Property is adjacent to Palmer Avenue which is seventy (70) feet wide but a significant portion of the road is unpaved. The existence of the unpaved portions of Palmer Avenue create an illusion that the front yard of the Property is much larger than it actually is. The dwelling was also constructed prior to the enactment of the Sussex County Zoning Code and was later raised to meet flood zone requirements. The elevation of the dwelling led to the construction of steps, landing, and decks. The variance is necessary to enable reasonable use of the Property. The steps, deck, and landing are needed in order to give the Applicants access to the raised dwelling. The difficulty was not created by the Applicants. The structures were placed on the Property by a prior owner. The variance will not alter the essential character of the neighborhood. Other homes in the neighborhood are similarly situated in proximity to Palmer Avenue and the existing dwelling and structures on the Property are consistent with the character of the neighborhood. The variance sought is the minimum variance necessary to afford relief. The variance represents the least modification of the regulation at issue.

The Board approved the variance application finding that it met the standards for granting a variance.

#### Decision of the Board

Upon motion duly made and seconded, the Application was approved. The Board Members voting to approve 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 Approve 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 September 23, 2014