

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: JEFFREY A. JOHNSON

(Case No. 11463)

A hearing was held after due notice on October 6, 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 application for a variance from the front yard and side yard setback requirements.

Findings of Fact

The Board found that the Applicant was seeking a variance of 5.3 feet from the ten (10) feet side yard setback requirement for an existing deck and steps, a variance of 24.3 feet from the thirty (30) feet front yard setback requirement for an existing deck, a variance of 8.4 feet from the ten (10) feet side yard setback requirement for an existing deck, and a variance of 10.2 feet from the thirty (30) feet front yard setback requirement for an existing dwelling. This application pertains to certain real property located southeast of Mississippi Avenue, 275.77 feet northeast of Bay Shore Drive and being Lot 7 Block J within North Shores Section of Broadkill Beach (911 Address: 5 Mississippi Avenue, Milton, DE); said property being identified as Sussex County Tax Map Parcel Number 2-35-3.12-102.00). 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 Johnson and Laurie Bronstein were sworn in to testify about the Application and William Schab, Esquire, presented the Application to the Board and presented pictures of the Property to the Board to review.
3. The Board found that Mr. Schab stated that the Property is located in Broadkill Beach.
4. The Board found that Mr. Schab stated that the Applicant recently purchased the Property and obtained a survey prior to settlement which showed the encroachments.
5. The Board found that Mr. Schab stated that the dwelling was built before the enactment of the Sussex County Zoning Code and is non-conforming.
6. The Board found that Mr. Schab stated that the previous owner purchased the Property in 1983 and obtained a building permit to build the deck in 1984.
7. The Board found that Mr. Schab stated that the deck was extended in 1993.
8. The Board found that Mr. Schab stated that the previous owner was not aware of the encroachments until 2014.
9. The Board found that Mr. Schab stated that the dwelling is a rectangular, one-story house on pilings which is compatible with other dwellings in the neighborhood.
10. The Board found that Mr. Johnson testified that it would be difficult to bring the dwelling and decks into compliance with the Zoning Code.
11. The Board found that Mr. Johnson testified that the decks would have to be removed and the dwelling would need to be moved or portions thereof removed in order to comply with the Zoning Code.
12. The Board found that Mr. Johnson testified that he has received no complaints from neighbors about the Application.

13. The Board found that Ms. Bronstein testified that she is the Real Estate Broker and is familiar with the area.
14. The Board found that Ms. Bronstein testified that the dwelling was built in the 1960s.
15. The Board found that Ms. Bronstein testified that the dwelling is placed in a similar proximity to the road as a neighboring dwelling and that the dwelling is not out of character for the neighborhood.
16. The Board found that Ms. Bronstein testified that the requested variances will not have an adverse effect to the surrounding properties.
17. The Board found that Ms. Bronstein testified that the Property currently has a cesspool and will need to be replaced with a septic system in the rear yard that will use the rear yard of the Property.
18. The Board found that Ms. Bronstein testified that she doubts the house and decks could be moved away from the road.
19. The Board found that Mr. Schab stated that the lot is unique in size as it is only fifty (50) wide and one-hundred (100) feet deep.
20. The Board found that Mr. Schab stated that the Property cannot otherwise be developed and that the variances are necessary to enable reasonable use of the Property.
21. The Board found that Mr. Schab stated that the house is inaccessible without the decks and steps.
22. The Board found that Mr. Schab stated that the exceptional practical difficulty was not created by the Applicant.
23. The Board found that Mr. Schab stated that the variance does not alter the character of the neighborhood as there are similar dwellings in the area.
24. The Board found that Mr. Schab stated that the variances are the minimum variances to afford relief.
25. The Board found that Mr. Johnson, under oath, confirmed the statements made by Mr. Schab.
26. The Board found that no parties appeared in support of or in opposition to the Application.
27. Based on the findings above and the testimony and exhibits 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 in size as it is only fifty (50) wide and one-hundred (100) feet deep. The situation is also unique as the dwelling was placed on the Property before the enactment of the Sussex County Zoning Code and the encroaching decks and steps are needed to access the dwelling which is raised on pilings. The variances are necessary to enable reasonable use of the Property. Without the variances, the structures would have to be removed or moved to other portions of the Property. Moving the structures would prove difficult as the dwelling is serviced by a cesspool in the rear yard that needs to be replaced by a septic system. The exceptional practical difficulty was not created by the Applicant. The structures were placed on the Property by a prior owner many years ago. The variances will not alter the essential character of the neighborhood. The structures are not out of character for the neighborhood and have been there for many years. The variances sought are the minimum variances necessary to afford relief. The variances represent the least modifications of the regulations at issue.

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 Mr. Dale Callaway, Mr. Jeff Hudson, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman. No Board Members voted against the Motion to approve the variance 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 December 2, 2014.