

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: REBECCA HOLSEN, TRUSTEE

(Case No. 11479)

A hearing was held after due notice on November 3, 2014. The Board members present were: 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 rear yard and side yard setback requirements.

Findings of Fact

The Board found that the Applicant was seeking a variance of 0.6 feet from the ten (10) feet rear yard setback requirement for an existing dwelling, a variance of 7.7 feet from the ten (10) feet rear yard setback requirement for an existing deck, and a variance of 5.5 feet from the ten (10) feet side yard setback requirement for an existing deck. This application pertains to certain real property located northeast of S Bay Shore Drive 1.0 mile southeast of Route 16 (Broadkill Road) and 1,000 feet southeast of Marlin Drive in Broadkill Beach (911 Address: 2202 S Bay Shore Drive, Milton, DE); said property being identified as Sussex County Tax Map Parcel Number 2-35-10.06-48.01. After a hearing, the Board made the following findings of fact:

1. The Board found that the Office of Planning & Zoning received one (1) letter in opposition to the Application and no correspondence in support of the Application.
2. Laurie Bronstein was sworn in to testify about the Application and William Schab, Esquire, was presented the Application. Mr. Schab presented pictures to the Board to review.
3. The Board found that Mr. Schab stated that the Applicant is the trustee of her late father's trust and that the Applicant has only been to the Property herself a few times.
4. The Board found that Mr. Schab stated that her parents purchased the Property in 1978 and that the dwelling and decks were built in 1979.
5. The Board found that Mr. Schab stated that the Trust directs the Applicant to sell the Property and that the Property was listed for sale by Ms. Bronstein.
6. The Board found that Mr. Schab stated that the Property is under contract to be sold but a survey completed for settlement showed the encroachments.
7. The Board found that Mr. Schab stated that the Property is irregularly shaped and the rear yard faces the beach.
8. The Board found that Mr. Schab stated that the dwelling is 9.4 feet from the rear property line rather than the required ten (10) feet.
9. The Board found that Mr. Schab stated that the wrap around deck is an important feature of the Property and that the entire deck would have to be removed to comply with the Sussex County Zoning Code.
10. The Board found that Mr. Schab stated that the deck is one of the most attractive features of the house.
11. The Board found that Mr. Schab stated that the structures have existed on the Property for approximately thirty-five (35) years.
12. The Board found that Mr. Schab stated that the difficulty was not created by the Applicant.
13. The Board found that Mr. Schab stated that the variances do not alter the essential character of the neighborhood.

14. The Board found that Mr. Schab stated that there are other variances in Broadkill Beach and that the variances will not be detrimental to the public welfare.
15. The Board found that Mr. Schab stated that the variances do not impair the uses of neighboring and adjacent properties.
16. The Board found that Mr. Schab stated that there are similar decks in the neighborhood.
17. The Board found that Mr. Schab stated that the variances requested are the minimum variances to afford relief and the least modifications to regulate the issue.
18. The Board found that Mr. Schab stated that the present owner would suffer a substantial hardship if the Application was denied.
19. The Board found that Laurie Bronstein testified that she is the Real Estate Agent and that she is familiar with the Property and Broadkill Beach.
20. The Board found that Laurie Bronstein testified that the existing deck is a critical part of the Property and that the deck has existed for many years.
21. The Board found that Laurie Bronstein testified that the variances do not alter the essential character of the neighborhood.
22. The Board found that Laurie Bronstein testified that the dwelling is similar to other houses in the neighborhood and the placement of the house is similar to neighboring dwellings.
23. The Board found that Laurie Bronstein testified that the septic system is located in the front yard of the Property and the septic system likely limited the placement of the dwelling.
24. The Board found that Ms. Bronstein also affirmed the testimony of Mr. Schab as true and correct.
25. The Board found that two (2) parties appeared in support of the Application.
26. The Board found that no parties appeared in opposition to the Application.
27. 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 due to its irregular shape. The Property is shaped like a parallelogram and has a unique angle in respect to the adjacent Bay Shore Drive. The Property is also unique because it is located in a flood zone. Furthermore, the existence of the septic system in the front yard limits the placement of the structures. The variances are necessary to enable the reasonable use of the Property. The dwelling is a reasonable house and the wrap around deck facing the Delaware Bay is a critical feature to the house. The exceptional practical difficulty and hardship were not created by the Applicant as the Applicant is the Successor Trustee to her father's Trust. The Applicant did not place the structures on the Property. The variances will not alter the essential character of the neighborhood as similar variances have been granted in the neighborhood. The structures have also been in their current location for approximately 35 years and are part of character of the neighborhood. 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. Jeff Hudson, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman. No Board Members voted against the Motion to approve the

variance application. Mr. Dale Callaway did not participate in the discussion or vote of this 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 January 6 2015