

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: WALTER FOULKROD and PATRICIA FOULKROD

(Case No. 11497)

A hearing was held after due notice on December 15, 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 the side yard setback requirement.

Findings of Fact

The Board found that the Applicants were seeking a variance of 5.25 feet from the thirty (30) feet front yard setback requirement for a proposed elevator and mechanical room. This application pertains to certain real property located east of Route One (Coastal Highway) and being at the intersection of Gum Road and Ocean Road and being Lot 2B-3 Block 6 Section One within Sussex Shores Development (911 Address: 31889 Ocean Road, Bethany Beach, DE); said property being identified as Sussex County Tax Map Parcel Number 1-34-13.11-1.00. After a hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a portion of the tax map of the area, and a survey of the Property dated October 28, 2014.
2. The Board found that the Office of Planning and Zoning received no letters regarding the Application.
3. Jack Mixler was sworn in to testify the Application and James Fuqua, Esquire, presented the Application on behalf of the Applicants. Mr. Fuqua submitted exhibits to the Board to review which included a tax map of the area, an aerial photograph, a survey of the Property, and a letter from the Sussex Shores Homeowners Association.
4. The Board found that Mr. Fuqua stated that the Property is a corner lot in Sussex Shores bordering Gum Road and Ocean Road.
5. The Board found that Mr. Fuqua stated that the Applicants own the adjacent lot to the east of the Property and the lot to the rear of the Property.
6. The Board found that Mr. Fuqua stated that the dwelling is elevated and has stairs leading to the first floor level.
7. The Board found that Mr. Fuqua stated that Mr. Foulkrod is older and now has a disability making navigating stairs difficult.
8. The Board found that Mr. Fuqua stated that the proposed elevator will allow easier access to his home.
9. The Board found that Mr. Fuqua stated that the lot is wooded and buffers the Property from the road.
10. The Board found that Mr. Fuqua stated that land to the north has been approved for a five (5) lot subdivision.
11. The Board found that Mr. Fuqua stated that the Homeowners Association supports the Application.
12. The Board found that Mr. Fuqua stated that the corner lot makes the Property unique.
13. The Board found that Mr. Fuqua stated that the closest lot affected by the variance is owned by the Applicants.
14. The Board found that Mr. Fuqua stated that the variance will enable reasonable use of the Property.

15. The Board found that Mr. Fuqua stated that the proposed location of the elevator will make it accessible from the existing driveway.
16. The Board found that Mr. Fuqua stated that the difficulty was not created by the Applicants.
17. The Board found that Mr. Fuqua stated that the variance will not alter the character of the neighborhood.
18. The Board found that Mr. Fuqua stated that the variance requested is the minimum variance to afford relief.
19. The Board found that Mr. Mixler, under oath, confirmed the statements made by Mr. Fuqua.
20. The Board found that no parties appeared in support of or in opposition to the Application.
21. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, which the Board found credible, persuasive, and un rebutted, the Board determined that the Application met the standards for granting a variance. The findings below further support the Board's decision to approve the Application.
 - a. The Property is unique because it is a corner lot. The Property is bordered on two (2) sides by subdivision roads and is bordered on another side by an alley. The location of these adjacent roadways limits the Applicant's ability to place the elevator on the Property. The situation is also unique because the Applicants demonstrated that the elevator is needed to provide the Applicants with access to the dwelling due to Mr. Foulkrod's disability. This condition limits his access to the elevated dwelling and renders the installation of an elevator at the access point of the home necessary.
 - b. Due to the location of the existing dwelling and the setback requirements, the elevator and mechanical room cannot be placed on the Property in strict conformity with the Sussex County Zoning Code. As previously discussed, the elevator is needed so that the Applicant can access the elevated dwelling. As such, the variance is necessary to enable reasonable use of the Property.
 - c. The exceptional practical difficulty was not created by the Applicants. The Applicants convinced the Board that the need for the variance was created by Mr. Foulkrod's disability and the previous development of the Property and the location of the adjacent roads and streets which restrict the areas where the elevator and mechanical room can be placed.
 - d. The variance will not alter the essential character of the neighborhood nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare. The Applicants own two adjacent properties and the Homeowners Association has indicated support for the Application. The addition of the elevator and mechanical room will be located on the side of the dwelling away from the intersection of Gum Road and Ocean Road so the structures should have little to no impact on traffic. No evidence was presented that would support a finding that the variance would alter the essential character of the neighborhood or substantially or permanently impair the appropriate use or development of adjacent property, or be detrimental to the public welfare.
 - e. The variance sought is the minimum variance necessary to afford relief and the variance represents the least modification of the regulation at issue. The variance will allow the Applicants to install the reasonably sized elevator for access to the dwelling.
 - f. The variance also represents a reasonable accommodation to the Applicants as the variance will allow Mr. Foulkrod, who has a disability, easier access to his elevated dwelling.

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 February 18, 2015