

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: PAMELA MCMILLAN

(Case No. 11623)

A hearing was held after due notice on August 17, 2015. 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 variance from the front yard setback requirement.

Findings of Fact

The Board found that the Applicant is seeking a variance of 1.5 feet from the thirty (30) feet front yard setback requirement for an existing bay window. This application pertains to certain real property located on the north side of Fir Drive approximately 546 feet west of Myrtle Drive (911 Address: 36351 Fir Drive, Rehoboth Beach); said property being identified as Sussex County Tax Map Parcel Number 3-34-13.00-806.00.

1. The Board was given copies of the Application, a portion of the tax map of the area, a survey of the Property dated June 19, 2015, and a survey of the Property dated March 23, 2015.
2. The Board found that the Office of Planning & Zoning had not received any correspondence in support of or in opposition to the Application.
3. The Board found that Pamela McMillan and Jamie Donaway were sworn in to testify about the Application. Mr. Donaway submitted a picture of the bay window.
4. The Board found that Mr. Donaway testified that the proposed location for the dwelling was staked out and was to be thirty-three (33) feet from the front property line.
5. The Board found that Mr. Donaway testified that they are unclear who made the error or how it occurred. Evidently, the encroachment was not discovered until after the dwelling was set.
6. The Board found that Mr. Donaway testified that the bay window has its own foundation and is not cantilevered which is why the dwelling was staked thirty-three (33) feet from the road. He contacted an engineer about reconfiguring the bay window but the engineer did not recommend it.
7. The Board found that Mr. Donaway testified that the dwelling is a modular home.
8. The Board found that Mr. Donaway testified that there are existing trees along the side yard property lines.
9. The Board found that Mr. Donaway testified that the window does not block any water views.
10. The Board found that Mr. Donaway testified that the Property is located on a hill and slopes significantly in the rear yard. The slope of the rear yard prevented the dwelling from being placed further back on the property and the foundation at the rear of the dwelling has ten (10) courses of block.
11. The Board found that Mr. Donaway testified that at the construction of the dwelling is complete.
12. The Board found that Mr. Donaway testified that the exceptional practical difficulty was not created by the Applicant.
13. The Board found that Mr. Donaway testified that the variance will not alter the essential character of the neighborhood. The dwelling replaces an older single-wide mobile home and is an improvement to the neighborhood.

14. The Board found that Mr. Donaway testified that the variance is the minimum variance to afford relief.
15. The Board found that Mr. Donaway testified that the rear of dwelling is close to the steep slope of the hill. The Property has a small building envelope due to its topography and the topography of the Property is very unique.
16. The Board found that Ms. McMillan testified that, during construction, an underground pipe was discovered and they were permitted to re-route the piping.
17. The Board found that Ms. McMillan testified that the other lots in the neighborhood are flatter.
18. The Board found that no parties appeared in support of or in opposition to the Application.
19. 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 due to its unique topography. The steep slope of the rear yard is particularly unique and limits the building envelope for the dwelling. The Property's unique characteristics have created an exceptional practical difficulty for the Applicant who seeks to retain a bay window on the lot.
 - b. Due to the uniqueness of the lot, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property has a unique topography and the buildable area thereof is limited due to its topography. The Applicant seeks to retain a bay window with a foundation but is unable to do so without violating the Sussex County Zoning Code. The Board is convinced that the variance is necessary to enable the reasonable use of the Property as the variance will allow a reasonable bay window to remain on the Property. The Board is convinced that the size, shape, and location of this bay window are reasonable, which is confirmed when reviewing the survey provided by the Applicant. Furthermore, the Applicant attempted to remedy the encroachment but was informed by its engineer that altering the location of the bay window was not advisable.
 - c. The exceptional practical difficulty was not created by the Applicant. The Applicant did not create the unusual topography of the Property. Additionally, the Applicant relied on its builder to construct the dwelling in compliance with the Sussex County Zoning Code. While the dwelling was staked out to meet the setback requirements, the bay window in the front of the dwelling did not encroach into the front yard setback area. The error in placement was not something caused by the Applicant. The Board is also convinced that the construction of the dwelling was complicated by the removal of trees and the need to re-route underground piping discovered during construction. The Board is convinced that the exceptional practical difficulty was not created by the Applicant but was created by the topography of the lot and the placement of the bay window by the Applicant's contractor.
 - 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 Board is convinced that the bay window will have no effect on the character of the neighborhood. A single-wide manufactured home was previously located on the Property and has been replaced by this newer structure. The picture submitted to the Board confirms that the bay window is pleasant in appearance. The bay window is also located in the front yard and does

not block any views of the water from neighboring properties. No evidence was presented which would indicate that the variance would somehow alter the essential character of the neighborhood or be detrimental to the public welfare.

- e. The variance sought is the minimum variance necessary to afford relief and the variance requested represents the least modification possible of the regulation at issue. The Applicant has demonstrated that the variance sought will allow the Applicant to retain the bay window on the Property. No additions to the bay window are being proposed which would require additional variances.

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 October 6, 2015.