

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: JAMES L. COXTON

(Case No. 11628)

A hearing was held after due notice on September 14, 2015. The Board members present were: Mr. Dale Callaway, Mr. Jeff Hudson, and Mr. Norman Rickard.

Nature of the Proceedings

This is an application for variances from the front yard and side yard setback requirements.

Findings of Fact

The Board found that the Applicant is seeking a variance of 2.5 feet from the ten (10) feet side yard setback requirement on the west side of the property for an existing dwelling, a variance of 6 feet from the ten (10) feet side yard setback requirement on the west side of the property for an existing HVAC, a variance of 1.8 feet from the thirty (30) feet front yard setback requirement for an existing dwelling, a variance of one (1) foot from the ten (10) feet side yard setback requirement for an existing porch, and a variance 0.8 feet from the thirty (30) feet front yard setback requirement for an existing set of steps. This application pertains to certain real property located on the west side of Quillen Road approximately 183 feet south of Canal Road (911 Address: 20590 Quillen Road, Rehoboth Beach); said property being identified as Sussex County Tax Map Parcel Number 3-34-19.12-36.00.

1. The Board was given copies of the Application, a portion of the tax map of the area, a survey dated June 30, 2015, assessment information, the Findings of Fact for Case No. 8981-2005, minutes from the Board's meeting held on March 7, 2005, a survey dated December 8, 2004, and an application for a variance filed in Case No. 8981.
2. The Board found that the Office of Planning & Zoning had not received any correspondence in support of the Application and received one (1) letter in opposition to the Application.
3. The Board found that James Coxton was sworn in to testify about the Application. Shannon Burton, Esquire, appeared on behalf of the Applicant and presented the Application to the Board. Mrs. Burton submitted copies of the Certificate of Compliance issued by Sussex County in 2006.
4. The Board found that Mrs. Burton stated that the Applicant purchased the Property in 2005.
5. The Board found that Mrs. Burton stated that side yard variances were approved by the Board in 2005 for a proposed dwelling. The Applicant thereafter constructed a dwelling on the Property and a Certificate of Compliance was issued for the dwelling in 2006.
6. The Board found that Mrs. Burton stated that the Applicant believed that the improvements were in compliance with the Sussex County Zoning Code.
7. The Board found that Mrs. Burton stated that the Applicant recently entered into a contract to sell the Property and a survey completed for settlement showed the encroachments. The Applicant was not aware of the encroachments prior to the 2015 survey.
8. The Board found that Mrs. Burton stated that the Property is unique in shape and size. The Property has a slanted property line and is narrow.
9. The Board found that Mrs. Burton stated that the Property cannot otherwise be developed since the dwelling has been on the lot without issue since 2006.

10. The Board found that Mrs. Burton stated that the exceptional practical difficulty was not created by the Applicant and is due to the uniqueness of the Property.
11. The Board found that Mrs. Burton stated that a significant portion of the dwelling would have to be removed in order to bring the dwelling into compliance with the Sussex County Zoning Code.
12. The Board found that Mrs. Burton stated that the Applicant obtained the necessary permits and approvals after construction of the dwelling and reasonably believed that the dwelling was constructed per the Code.
13. The Board found that Mrs. Burton stated that the variances do not alter the character of the neighborhood and that the use is not detrimental to the public welfare. There have been no prior complaints from the neighbors.
14. The Board found that Mrs. Burton stated that the variances requested are the minimum variances to afford relief.
15. The Board found that Mr. Coxton, under oath, confirmed the statements made by Mrs. Burton. Mr. Coxton testified that there have no changes made to the Property since 2006.
16. The Board found that one (1) party appeared in support of the Application.
17. The Board found that no parties appeared in opposition to the Application.
18. 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 findings below further support the Board's decision to approve the Application.
 - a. The Property is unique due to its unique shape and size. The Property is narrow and has a unique angle as it relates to the adjacent road. The uniqueness of the Property has created a limited building envelope for the Applicant in the construction of the dwelling. Previously, the Applicant had obtained variances in order to build the dwelling. The Applicant constructed the dwelling and received a Certificate of Compliance that the dwelling met the requirements under the Sussex County Zoning Code. Only recently did the Applicant learn that the dwelling was not built in compliance with the Code. The Board is convinced that the uniqueness of the Property has created an exceptional practical difficulty for the Applicant which was further exacerbated by the error in construction.
 - 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 size and shape and the buildable area thereof is greatly limited due to its size and shape. The Applicant seeks to retain a dwelling but is unable to do so without violating the Sussex County Zoning Code. The Applicant previously obtained variances to allow for the construction of this dwelling but did not realize that the dwelling was constructed outside of the allowable building envelope. The Board is convinced that the variances are necessary to enable the reasonable use of the Property as the variances will allow a dwelling, porch, HVAC, and steps to remain on the Property. The Board is convinced that the size, shape, and location of these structures are reasonable, which is confirmed when reviewing the survey provided by the Applicant.
 - c. The exceptional practical difficulty was not created by the Applicant. The Applicant did not create the unusual size or shape of the Property which has created an exceptional practical difficulty as the building envelope is quite small. The Applicant previously obtained variances and relied on his builder to construct the home in compliance with the Sussex County Zoning Code. The Applicant obtained the necessary approvals for the construction, including a Certificate of Compliance. It is clear to the Board that the Applicant reasonably believed that the dwelling was built in

compliance with the Code. The Board is convinced that the exceptional practical difficulty was not created by the Applicant but was created by the size and shape of the lot and the builder's error in constructing the dwelling.


- d. The variances 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 dwelling will have no effect on the character of the neighborhood. The dwelling has been on the Property since 2006 and the Applicant received no complaints about the dwelling prior to filing the Application. The Board is convinced that variances should have no impact on the community. No evidence was presented which convinced the Board that the variances would somehow alter the essential character of the neighborhood or be detrimental to the public welfare.
- e. The variances sought are the minimum variances necessary to afford relief and the variances requested represent the least modifications possible of the regulations at issue. The Applicant has demonstrated that the variances sought will allow the Applicant to retain the structures on the Property. No additions to the structures 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, and Mr. Norman Rickard. No member voted against the Motion to approve the variance application. Mr. John Mills and Mr. Brent Workman were not present and 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 October 20, 2015