

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: DAVID E. KUNSELMAN & PATRICIA S. KUNSELMAN

(Case No. 11636)

A hearing was held after due notice on September 21, 2015. The Board members present were: Mr. Dale Callaway, Mr. Jeff Hudson, Mr. John Mills, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for a variance from the side yard setback requirement.

Findings of Fact

The Board found that the Applicants are seeking a variance of 1 foot from the ten (10) feet side yard setback requirement for existing bump outs on an existing dwelling. This application pertains to certain real property located on the east side of Shore Drive, 50 feet south of Oak Street (911 Address: 9279 Shore Drive, Milford); said property being identified as Sussex County Tax Map Parcel Number 2-30-17.00-54.00.

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 December 31, 2014.
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. Laurie Bronstein was sworn in to testify about the Application and William Schab, Esquire, presented the Application on behalf of the Applicant. Mr. Schab submitted a picture to the Board to review.
4. The Board found that Mr. Schab stated that the Applicants purchased the Property in January 2015 and a survey completed for settlement showed the encroachments.
5. The Board found that Mr. Schab stated that the bump outs are for a bay window and an interior stairway. The existing dwelling otherwise meets the required setback requirements.
6. The Board found that Mr. Schab stated that there was a small cottage on the Property in 1999 and the existing dwelling was constructed in 2002.
7. The Board found that Mr. Schab stated that the bay window on the second floor and the interior stairway encroach one (1) foot into the setback requirement.
8. The Board found that Mr. Schab stated that a Certificate of Compliance was issued for the dwelling and the violation was not noticed at the time the dwelling was constructed.
9. The Board found that Mr. Schab stated that the Property cannot otherwise be developed without massive expense and renovation of the existing dwelling.
10. The Board found that Mr. Schab stated that the exceptional practical difficulty was not created by the Applicants since they did not construct the dwelling.
11. The Board found that Mr. Schab stated that the Property is located in Prime Hook Beach.
12. The Board found that Mr. Schab stated that the variance does not alter the essential character of the neighborhood.
13. The Board found that Mr. Schab stated that the variance requested is the minimum variance to afford relief and the variance requested is the least modification of the regulation at issue.
14. The Board found that Ms. Bronstein, under oath, affirmed the statements made by Mr. Schab.
15. The Board found that Ms. Bronstein testified that she is a realtor and is familiar with the area.

16. The Board found that Ms. Bronstein testified that she was surprised when she learned of the setback violation.
17. The Board found that Ms. Bronstein testified that there would be no access to the second and third floor if the stairwell was removed.
18. The Board found that Ms. Bronstein testified that the encroachment does not adversely affect neighboring properties.
19. The Board found that no parties appeared in support of or in opposition to the Application.
20. 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 narrow width. The Property is also adjacent to the Delaware Bay as evidenced by the survey. The situation is unique because a prior owner constructed a dwelling which complies with the side yard setback requirement except for two bump outs which slightly encroach into the setback area. The encroachments were not initially discovered and approvals for the structure were granted at the time the dwelling was constructed. This unusual situation has created an exceptional practical difficulty for the Applicants who seek to retain a reasonably sized dwelling on the lot.
 - b. Due to the uniqueness of the situation, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The building was constructed in 2002 and a Certificate of Compliance was issued at that time. Recently, however, the Applicants discovered that the bump outs for a bay window and an interior stairwell encroach into the setback area. These structures cannot be removed without massive expense to the Applicants and major renovations to the dwelling. The Applicants seek to retain a dwelling and bump outs which slightly encroach into the setback area. It is clear to the Board that the Applicants are unable to retain the bump-outs 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 reasonably sized dwelling with bump-outs to remain on the Property. The Board is convinced that the size, shape, and location of this building and bump-outs are reasonable, which is confirmed when reviewing the survey provided by the Applicants.
 - c. The exceptional practical difficulty was not created by the Applicants. The dwelling with bump-outs was constructed by a prior owner. The Applicants only recently purchased the Property and had no involvement in the construction of the dwelling or the bump-outs. The encroachments were only recently discovered after the home had been on the Property for many years. The prior owner obtained all necessary approvals, including a Certificate of Compliance from Sussex County, which indicated that the project complied with the Code. The Board is convinced that the exceptional practical difficulty was not created by the Applicants but by a prior owner when the dwelling and bump-outs were constructed.
 - 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 dwelling and bump-outs will have no effect on the character of the neighborhood. The Property is located in a residential area and the use is a residential use. The structure has been in its

present location since 2002 and no complaints have been submitted into the record regarding the encroachments. Furthermore, no evidence was presented which indicated that the variance would somehow alter the essential character of the neighborhood or be detrimental to the public welfare. The lack of such evidence is telling since the dwelling has been in its present location for many years.

- 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 dwelling with the bump-outs on the Property. No additions to the dwelling are proposed.

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, and Mr. Brent Workman. No Board Member voted against the Motion to Approve the Application. Mr. Norman Rickard was 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 November 17, 2015.