

**BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY**

**IN RE: DANIEL P. GOLDEN AND JEANETTE E. GOLDEN**

**(Case No. 11687)**

A hearing was held after due notice on January 4, 2016. The Board members present were: Mr. Dale Callaway, Mr. John Mills, Mr. Jeff Hudson, Mr. Norman Rickard, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for variances from the front yard setback requirement.

Findings of Fact

The Board found that the Applicants are seeking a variance of 22.9 feet from the thirty (30) feet front yard setback requirement, a variance of 9.3 feet from the fifteen (15) feet front yard setback requirement for a proposed third floor addition and a variance of five (5) feet from the fifteen feet front yard setback requirement for an existing pergola. This application pertains to certain real property located on the northeast corner of 5<sup>th</sup> Street and Surf Road (911 Address: 103 5<sup>th</sup> Street, Unit C, Bethany Beach); said property being identified as Sussex County Tax Map Parcel Number 1-34-13.16-27.00-Unit C.

1. The Board was given copies of the Application, architect plans, a portion of the tax map of the area, and a survey dated May 27, 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 Daniel Golden and Timothy Tribbitt were sworn in and testify about the Application. Ray Tomasetti, Esquire, presented the case to the Board on behalf of the Applicants and submitted exhibits for the Board to review.
4. The Board found that Mr. Tomasetti stated that the Applicants purchased the Property in 1992 and the Property is part of a condominium.
5. The Board found that Mr. Tomasetti stated that the Applicants' unit was constructed in the late 1960s and the building was converted into condo units in 1990.
6. The Board found that Mr. Tomasetti stated that Units A & B are also close to Fifth Street. The neighbors who own Units A & B have no objection to the Application.
7. The Board found that Mr. Tomasetti stated that the Applicants propose to add a third floor to the existing unit and the proposed third floor will not encroach any further than the existing footprint.
8. The Board found that Mr. Tomasetti stated that the Property is shallow as it is only seventy (70) feet deep.
9. The Board found that Mr. Tomasetti stated that the Property cannot otherwise be developed in compliance with the Sussex County Zoning Code.
10. The Board found that Mr. Tomasetti stated that the unit has been in its present location for nearly 50 years.
11. The Board found that Mr. Tomasetti stated that the difficulty was not created by the Applicants.
12. The Board found that Mr. Tomasetti stated that the variances will not alter the essential character of the neighborhood.
13. The Board found that Mr. Tomasetti stated that the variances requested are the minimum variances to afford relief.
14. The Board found that Mr. Tomasetti stated that the addition will improve the aesthetics of the building and will not compromise its integrity.
15. The Board found that Mr. Golden testified that he is an owner of the Property.

16. The Board found that Mr. Golden testified that the proposed addition will be on the same footprint as the existing structure and will not further encroach into the setback area.
17. The Board found that Mr. Golden testified that the Homeowners Association has no objection to the Application.
18. The Board found that Mr. Golden testified that the proposed addition will not exceed the height of the neighboring units.
19. The Board found that Mr. Golden testified that the pergola was built in 1992.
20. The Board found that Mr. Golden testified that Surf Road is an easement and no vehicles use the road.
21. The Board found that Mr. Tribbitt testified that he is the contractor.
22. The Board found that Mr. Tribbitt testified that the proposed addition will meet the flood zone requirement and not exceed the maximum allowable dollar amount for renovations to an existing dwelling.
23. The Board found that Mr. Tribbitt testified they have obtained a permit for the addition from the Delaware Division of Natural Resources and Environmental Control ("DNREC").
24. The Board found that Mr. Golden, under oath, affirmed the statements made by Mr. Tomasetti.
25. The Board found that no parties appeared in support of or in opposition to the Application.
26. 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 unrebutted, 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 as it is a corner lot in a flood zone in a condominium where the building was constructed in the late 1960s. The Property is also unique as the lot is quite shallow. The lot's unique characteristics have created an exceptional practical difficulty for the Applicants who seek to retain an existing pergola and construct an addition on the lot. The uniqueness of the Property is clear when reviewing the pictures provided by the Applicants and survey.
  - b. Due to the uniqueness of the lot, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property is a corner lot in a flood zone and, as a result, the buildable area thereof is limited. The Applicants seek to retain a pergola of a reasonable size but are unable to do so without violating the Sussex County Zoning Code. Furthermore, the Applicants seek to add another floor to the existing dwelling on the same footprint as the existing dwelling but cannot do so without violating the Sussex County Zoning Code. The Board is convinced that the variances are necessary to enable the reasonable use of the Property as the variances will allow a reasonably sized pergola to remain on the Property and for the Applicants to make a reasonable addition to the Property consistent with other units in the condominium. The Board is convinced that the size, shape, and location of this addition 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 Applicants did not create the corner lot which has resulted in a limited building envelope on the Property and the Applicants also did not place the dwelling on the Property. Rather, a prior owner built the dwelling in the late 1960s and later turned the building into a condominium. The unique characteristics of the Property are clear when reviewing the

survey. The Board is convinced that the exceptional practical difficulty was not created by the Applicants but was created by the lot's unique characteristics and history and by the placement of the dwelling thereon by the prior owner.

- 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 addition to the dwelling and the pergola will have no effect on the character of the neighborhood. The dwelling has been on the Property since the late 1960s and the addition will not encroach further into the setback areas than the existing dwelling. The dwelling with the proposed addition will also be similar in height to other units in the condominium. The other units in the condominium also encroach into the front yard setback area along Fifth Street and the Applicants' dwelling with the addition will not encroach any further into this setback area. The record indicates that the neighbors have no objection to this addition and the addition will likely improve the aesthetics of the building. Meanwhile, the pergola has been on the Property since 1992 and no complaint as to its location was noted in the record. No evidence was presented which would indicate that the variances would somehow alter the essential character of the neighborhood or be detrimental to the public welfare. Lastly, the Board notes that Surf Road is more akin to a walkway than a public road. The Applicant testified that no vehicles use Surf Road and that it is used as an access easement. This testimony is supported by pictures of Surf Road submitted into the record. As such, the impact of the encroachments into the setback areas along Surf Road are likely non-existent.
- 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 Applicants have demonstrated that the variances sought will allow the Applicants to retain a reasonably sized pergola and to construct a reasonable addition to the dwelling on the Property. The Applicants are not expanding the footprint of the 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 Member 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 March 1, 2016