

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

**IN RE: KENNETH A. HUBLEY AND PRISCILLA M. HUBLEY**

**(Case No. 11733)**

A hearing was held after due notice on March 7, 2016. The Board members present were: Mr. Dale Callaway, Mr. Jeff Hudson, Mr. Norman Rickard, and Mr. Brent Workman. Mr. John Mills was absent.

Nature of the Proceedings

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

Findings of Fact

The Board found that the Applicants are seeking a variance of five (5) feet from the thirty (30) feet front yard setback requirement for a proposed addition. This application pertains to certain real property located on the south side of Bayview West in Bayview Estates (911 Address: 39016 Bayview West, Selbyville); said property being identified as Sussex County Tax Map Parcel Number 5-33-19.00-207.00.

1. The Board was given copies of the Application, a portion of the tax map of the area, a letter from the Bayview Estates Property Owners Association, a petition to approve the variances, a picture of the Property, a drawing showing the proposed addition, a building permit, and a survey dated September 23, 1988.
2. The Board found that the Office of Planning & Zoning received a petition with eight (8) signatures in support of the Application and a letter of support from the Homeowners Association and had not received any correspondence in opposition to the Application.
3. The Board found that Kenneth Hubley was sworn in to testify about the Application.
4. The Board found that Mr. Hubley testified that he is the owner of the Property and that the lot is undersized which limits the space available for an addition. The Property is smaller than other lots in the development and is narrow.
5. The Board found that Mr. Hubley testified that the Property cannot otherwise be developed.
6. The Board found that Mr. Hubley testified that the canal is at the rear of the Property.
7. The Board found that Mr. Hubley testified that the Applicants are retired and plan to move to the Property permanently.
8. The Board found that Mr. Hubley testified that a second story addition is not feasible. The existing interior of the dwelling does not allow for steps to be added to construct a second story addition or place the addition at a different location.
9. The Board found that Mr. Hubley testified that the proposed addition will be used as a master bedroom and walk-in closet.
10. The Board found that Mr. Hubley testified that the difficulty was not created by the Applicants.
11. The Board found that Mr. Hubley testified that the variance will not alter the character of the neighborhood. Rather, the addition will be similar to others in the neighborhood and the variances will not be detrimental to the public welfare.
12. The Board found that Mr. Hubley testified that the addition will increase the value of the Property and the development.
13. The Board found that Mr. Hubley testified that the variance requested is the minimum variance necessary to afford relief.

14. The Board found that Mr. Hubley testified that the Applicants have owned the Property since 1996.
15. The Board found that Mr. Hubley testified that the existing home consists of approximately 1,800 square feet and the addition is roughly 280 square feet.
16. The Board found that Mr. Hubley testified that the first floor addition will allow the Applicants the ability to maneuver within their dwelling. He is unable to navigate stairs well.
17. The Board found that Mr. Hubley testified that the rear yard does not flood but approximately 25 feet of the rear yard is in the lagoon.
18. The Board found that Mr. Hubley testified that the ten (10) feet wide addition is the minimum width the addition needs to be in order to afford relief.
19. The Board found that Mr. Hubley testified that there is space between the edge of the paving along the road and the front yard property line.
20. The Board found that no parties appeared in support of or in opposition to the Application.
21. The Board tabled its discussion and vote on this matter until March 21, 2016.
22. 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 as it is a small lot and a portion of the rear yard is located in a lagoon. The unique characteristics of the lot have thus created a limited building envelope and an exceptional practical difficulty for the Applicants who seek to build an addition 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 is a small lot and a portion of the rear yard is located in a lagoon which limits the building envelope as well as the placement options for an addition to the dwelling. The Applicants seek to build an addition of a reasonable size but are unable to do so without violating the Sussex County Zoning Code. The Board notes that the dwelling consists of only 1,800 square feet. The Board is convinced that the variance is necessary to enable the reasonable use of the Property as the variance will allow the Applicants to build a reasonably sized addition on the Property. The Board is convinced that the shape and location of this addition are also 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 size of the lot or a place a portion of the lot in a lagoon; all of which limit the building envelope on the Property. 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 the lot's unique characteristics.
  - 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 addition will have no effect on the character of the neighborhood. Other variances have been granted in the community and letters of support from neighbors have been submitted into the record. The Board notes that the homeowners association has a requirement that homes be located 25 feet from the front property line and this addition will not exceed that requirement. Furthermore, 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. Lastly, the Board also notes that there is space between the front property line and the edge of paving for the adjacent Bayview West; thereby creating the illusion of a larger front yard.

- 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 Applicants have demonstrated that the variance sought will allow the Applicant to construct a reasonably sized addition on the Property. The Board notes that the addition will be only approximately 280 square feet in size; which is modest.

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. Norman Rickard, and Mr. Brent Workman. No Board Member voted against the Motion to approve the variance application. Mr. John Mills did not participate in the discussion or vote on 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 May 12, 2016.