

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: BE & F, LLC

(Case No. 11780)

A hearing was held after due notice on June 6, 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 a variance from the rear yard setback requirement.

Findings of Fact

The Board found that the Applicant is seeking a variance of 13.4 feet from the twenty (20) feet rear yard setback requirement for an existing second-level deck. This application pertains to certain real property located on the south side of Elmwood Avenue East approximately 1,214 feet south of Woodland Circle (911 Address: 23801 Elmwood Avenue East, Lewes); said property being identified as Sussex County Tax Map Parcel Number 2-34-18.09-3.00.

1. The Board was given copies of the Application, a portion of the tax map of the area, a survey of the Property dated February 14, 1973, a survey of the Property dated December 28, 2015, an aerial photograph of the Property, and a picture of the Property.
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 Catherine Ford was sworn in to testify about the Application. Ray Tomasetti, Jr., Esquire, presented the case on behalf of the Applicant.
4. The Board found that Mr. Tomasetti stated that the Applicant purchased the Property in February 2016. The previous owner owned the Property since 1973 and the dwellings and decks have existed on the Property for over 43 years.
5. The Board found that Mr. Tomasetti stated that a survey completed in 1973 showed the decks but the survey did not show the distance from the rear yard property line. A survey completed in 2015, however, showed the encroachment. The previous owners were unaware of the encroachment.
6. The Board found that Mr. Tomasetti stated that the rear of the Property is adjacent to common area.
7. The Board found that Mr. Tomasetti stated that the Property is unique in shape and size as the Property is pie-shaped and is very narrow in the front yard. The narrow front yard forced the dwelling to be placed to the rear of the Property.
8. The Board found that Mr. Tomasetti stated that the Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code.
9. The Board found that Mr. Tomasetti stated that the exceptional practical difficulty was not created by the Applicant.
10. The Board found that Mr. Tomasetti stated that the variance will not alter the essential character of the neighborhood and the use is not detrimental to the public welfare.
11. The Board found that Mr. Tomasetti stated that the neighbors were not aware of the encroachment and have no objection to the Application.
12. The Board found that Mr. Tomasetti stated that the variance requested is the minimum variance to afford relief.
13. The Board found that Ms. Ford, under oath, affirmed the statements made by Mr. Tomasetti.

14. The Board found that Ms. Ford testified that the dwelling and deck are unique in shape.
15. The Board found that Ms. Ford testified that the encroachment went unnoticed until the survey.
16. The Board found that Ms. Ford testified that there have been no complaints about the deck and there are similar decks in the area.
17. The Board found that Ms. Ford testified that the entire rear wall of the dwelling consists of sliding doors that lead directly onto the deck.
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 as it is small and has a unique shape as shown on the survey. The front yard is also exceptionally narrow. The situation is unique because the existing dwelling was constructed in 1973 and has been in its present location for many years but the encroachment has only recently been discovered. The Board finds that the unique conditions of the lot have created a unique building envelope which has created an exceptional practical difficulty for the Applicant who wishes to keep the existing structures on the lot.
 - b. Due to the uniqueness of the lot and the situation, 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 limited due to its size and shape. The Applicant seeks to retain the second floor deck at its existing location 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 the Applicant to retain the second floor deck on the lot. This deck has been in its current location since 1973. The Board is convinced that the size, shape, and location of the second floor deck 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 and shape of the Property. The unique lot size and shape have resulted in a limited building envelope on the Property and the small and unique building envelope has created an exceptional practical difficulty. The unique characteristics of the Property are clear when reviewing the survey. Furthermore, the second floor deck was placed on the Property by a prior owner and has been in its present location for approximately 43 years. The Board is convinced that the exceptional practical difficulty was not created by the Applicant but was created the lot's unique characteristics and by the placement of the second floor deck by a prior owner.
 - 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 second floor deck will have no effect on the character of the neighborhood. The second floor deck has been on the Property for many years and, despite its longstanding location, no complaints were noted in the record about its location. 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.

- 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 second floor deck on the lot in its current location. No variances for additions to this structure are being sought.

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 August 2, 2016