

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

**IN RE: DANIEL A. PREMO**

**(Case No. 11817)**

A hearing was held after due notice on August 1, 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 for a through lot.

Findings of Fact

The Board found that the Applicant is seeking a variance of 30.1 feet from the sixty (60) feet front yard setback requirement for a proposed handicapped ramp for a through lot, a variance of 25.7 feet from the sixty (60) feet front yard setback requirement for an existing building for a through lot, a variance of 34.3 feet from the sixty (60) feet front yard setback requirement for a proposed deck, and a variance of 27.7 feet from the sixty (60) feet front yard setback requirement for an existing building for a through lot. This application pertains to certain real property located on the west side of Sussex Highway east side of Bridgeville Highway approximately 690 feet south of Elks Road (911 Address: 22128 Sussex Highway, Seaford); said property being identified as Sussex County Tax Map Parcel Number 3-31-4.00-6.01.

1. The Board was given copies of the Application, a survey of the Property dated May 6, 2016, a permit from the Office of the State Fire Marshal, an aerial photograph of the Property, and a portion of the tax map of the area.
2. The Board found that the Office of Planning & Zoning received no correspondence in support of or in opposition to the Application.
3. The Board found that Daniel Premo was sworn in to testify about the Application.
4. The Board found that Mr. Premo testified that the lot is small in size making it unique and the Property cannot be developed in strict conformity with the Sussex County Zoning Code.
5. The Board found that Mr. Premo testified that the building was placed on the lot in 1997 by the previous owner and the existing building is not compliant with the Americans with Disabilities Act ("ADA"). He proposes constructing a handicap ramp that will meet the ADA standards.
6. The Board found that Mr. Premo testified that the variances will not alter the essential character of the neighborhood and the variances requested are the minimum variance necessary to afford relief.
7. The Board found that Mr. Premo testified that the building will be used for a mortgage business. The proposed deck is for additional office space and for meetings with realtors. The outdoor space will also be used by his employees.
8. The Board found that Mr. Premo testified that the building only consists of approximately 1,400 square feet.
9. The Board found that Mr. Premo testified that size of the lot and setback requirements make this Property impossible to develop without a variance.
10. The Board found that Mr. Premo testified that the HVAC unit is in the south side of the building.
11. The Board found that no parties appeared in support of or in opposition to the Application.
12. 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 irregularly shaped with road frontages on two roads. These conditions greatly restrict the building envelope on the Property. In fact, the setback requirements off of Route 13 and Alternate Route 13 completely eliminate the building envelope for the Property. Consequently, the Applicant has no area where he can retain the building and place a new deck or handicap ramp without a variance. It is clear to the Board that the lot's unique characteristics have created an exceptional practical difficulty for the Applicant who seeks to retain an existing building and build a new deck and handicap ramp 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 bordered on two sides by roads and has no building envelope due to the setback requirements. The Applicant seeks to retain an existing building and build a deck and handicap ramp of a reasonable size but is unable to 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 the Applicant to retain an existing building and to build a reasonably sized deck and handicap ramp on the Property. The Board is convinced that the shape and location of the building, deck, and handicap ramp are also 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 shape and size of the lot or enact the setback requirements which render the Property unbuildable. The Applicant did not construct the existing building on the lot either. 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 Applicant but was created the lot's unique characteristics.
- 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 building, deck, and handicap ramp will have no effect on the character of the neighborhood. The building has been on the Property since 1997 and no complaints were noted in the record about its location. The deck will still be located 25.7 feet from the property line and over 50 feet from the Alternate U.S. Route 13. The handicap ramp will be located near the entrance of the building and will be nearly 100 feet from U.S. Route 13. 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.
- e. The variances sought are the minimum variances necessary to afford relief and the variances requested represent the least modifications possible of the regulation at issue. The Applicant has demonstrated that the variances sought will allow the Applicant to retain an existing building and to construct a deck and handicap ramp on the Property. The Board is convinced that the Applicant has taken appropriate measures to limit the intrusion of these structures into the setback areas.

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 October 4, 2016