

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

**IN RE: HENRY W. BROOKS, II**

**(Case No. 11829)**

A hearing was held after due notice on September 12, 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 front yard setback requirement.

Findings of Fact

The Board found that the Applicant is seeking a variance of 10.4 feet from the thirty (30) feet front yard setback requirement for an existing dwelling. This application pertains to certain real property located on the west side of Pine Needle Drive approximately 302 feet south of Sandy Cove Road (911 Address: 30312 Pine Needle Drive, Ocean View); said property being identified as Sussex County Tax Map Parcel Number 1-34-9.00-104.02.

1. The Board was given copies of the Application, an aerial photograph of the Property, a survey of the Property dated May 4, 2016, 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 Shannon Carmean Burton, Esquire, appeared on behalf of the Applicants and submitted affidavits from Carol K. Kuhn and John R. Kuhn with exhibits.
4. The Board found that Ms. Burton stated that the Applicant recently purchased the Property. The previous owners are John & Carol Kuhn and they purchased the Property in 1991.
5. The Board found that Ms. Burton stated that, in 1992, the Kuhns replaced the existing manufactured home that had been on the lot since 1984. The Kuhns believed a variance had been granted for the replacement manufactured home but there is no record of a previous variance. A Certificate of Compliance, however, was issued for the manufactured home in 1992.
6. The Board found that Ms. Burton stated that the encroachment was discovered by a survey completed for settlement for the sale of the Property on May 4, 2016.
7. The Board found that Ms. Burton stated that there have been no changes made to the front of the manufactured home since 1992.
8. The Board found that Ms. Burton stated that the Property is long and narrow and abuts to the lagoon making it unique.
9. The Board found that Ms. Burton stated that the Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code and the variance is necessary to enable reasonable use of the Property.
10. The Board found that Ms. Burton stated that the exceptional practical difficulty was not created by the previous owners or the Applicant.
11. The Board found that Ms. Burton stated that the variance will not and does not alter the essential character of the neighborhood. The use is not detrimental to the public welfare.
12. The Board found that Ms. Burton stated that the Kuhns never received complaints about the location of the dwelling.

13. The Board found that Ms. Burton stated that the variance is the minimum variance to afford relief and the variance requested represents the least modification of the regulation at issue.
14. The Board found that no parties appeared in support of or in opposition to the Application.
15. 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 situation is unique as the Applicant recently purchased the Property and a survey for settlement showed that the existing dwelling encroaches into the setback requirements. The previous owners placed this structure on the Property and obtained a Certificate of Compliance from the Sussex County Planning & Zoning Department over twenty (20) years ago. The Applicant seeks to retain this structure but cannot do so. The front yard of the Property is also unique because it appears from the survey as though the front yard property line does not match the edge of paving for the adjacent Pine Needle Drive thereby making the front yard appear to be larger than it actually is. It is likely that the encroachment in the front yard was not discovered due to this discrepancy. The Board also notes that the Property has a unique size and shape as it is a narrow lot adjacent to a lagoon. The survey and the aerial photograph indicate that a portion of the rear yard is likely in the lagoon thereby limiting the ability to build structures in the rear of the Property. These conditions have created an exceptional practical difficulty for the Applicant who seek to retain the dwelling on the Property.
  - b. Due to the uniqueness of the Property and the situation, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The dwelling which encroaches into the setback area has been on the Property for many years and cannot be moved into compliance with the Sussex County Zoning Code. The prior owner obtained the necessary Certificate of Compliance only to later learn that the dwelling does not comply with the Code. It is clear to the Board that the variance is necessary to enable reasonable use of the Property as a reasonably sized home cannot be retained on the Property without a variance. The Board is convinced that the shape and location of the dwelling 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 place the dwelling on the Property. Rather, a prior owner placed the dwelling on the lot and obtained the necessary Certificate of Compliance from Sussex County. The prior owner detrimentally relied on the Certificate of Compliance and reasonably believed that the dwelling did not encroach into the setback areas. Notably, the edge of paving of Pine Needle Drive does not appear to extend to the front property line so the front yard is actually shorter than it appears. The mistake in placement is reasonable and one which the prior owner clearly relied on to his detriment. Furthermore, the rear of the Property is adjacent to a lagoon and portions of the rear yard appear to be located underwater. This condition greatly limits the size of the building envelope and thereby creates an exceptional practical difficulty for the Applicant.
  - 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 will have no effect on the character of the neighborhood. No complaints were noted in the record about the location of the dwelling and this lack of evidence is telling since the dwelling has been in its present location for more than twenty (20) years. 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. The Board also notes that the encroachment into the front yard setback area is also unlikely to be noticed due to the apparent difference between the edge of paving and the property line.

- 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 reasonably sized dwelling on the Property. No additions to this dwelling is being proposed and the Board finds that the dwelling is the minimum size needed to afford reasonable use of the Property.

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 November 9, 2016