

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

**IN RE: KENT SCHOCH**

**(Case No. 11831)**

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 variances from the front yard setback requirement.

Findings of Fact

The Board found that the Applicant is seeking a variance from the Sussex County regulation requiring a fifty (50) feet setback from the state wetland line and a variance from the five (5) feet from the fifteen (15) feet front yard setback requirement. This application pertains to certain real property located on the south side of Truman Avenue and west side of South Bay Shore Drive approximately 50 feet south of the corner of South Bay Shore Drive and Truman Avenue (911 Address: None Available); said property being identified as Sussex County Tax Map Parcel Number 2-35-4.17-80.01.

1. The Board was given copies of the Application, a letter dated April 18, 2016, from Larry Fifer, Esquire, Stormwater Assessment Study GIS images, an aerial photograph of the Property, a survey of the Property dated June 23, 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 Kent Schoch was sworn in to testify about the Application.
4. The Board found that Mr. Schoch testified that the Property is unique as it is an oddly shaped parcel which fronts on two (2) roads but is not a corner lot.
5. The Board found that Mr. Schoch testified that the septic system can only be placed on the side of the Property closest to South Bay Shore Drive and that the only area to build a dwelling is on the northwest side of the Property.
6. The Board found that Mr. Schoch testified that the Property was created prior to the enactment of wetland regulations which require a fifty (50) feet setback from state wetlands. This setback requirement renders the Property unbuildable and the Property cannot be developed in strict conformity with the Sussex County Zoning Code.
7. The Board found that Mr. Schoch testified that the wetland regulation was to protect wetlands from new development within Sussex County and not from development of existing lots.
8. The Board found that Mr. Schoch testified that other houses in the area are within the wetland setback requirement.
9. The Board found that Mr. Schoch testified that the exceptional practical difficulty was not created by the Applicant.
10. The Board found that Mr. Schoch testified that the variances will not alter the essential character of the neighborhood and that the use will not be detrimental to the public welfare.
11. The Board found that Mr. Schoch testified that the dwelling will be less than 1,900 square feet in size and will be constructed on pilings.
12. The Board found that Mr. Schoch testified that the proposed dwelling will not adversely affect the uses of the neighboring and adjacent properties nor will the dwelling adversely affect the existing wetlands or surrounding habitat.

13. The Board found that Mr. Schoch testified that the proposed deck will not have a roof thereby allowing rain to pass through.
14. The Board found that Mr. Schoch testified that the proposed dwelling will have no effect on traffic along Truman Avenue.
15. The Board found that Mr. Schoch testified that the variances will not adversely affect water quality, fish, wildlife, or plant habitat.
16. The Board found that Scott Kimmel and Beth Frederick were sworn in and testified in opposition to the Application.
17. The Board found that Mr. Kimmel testified that he lives on the adjacent property and has owned that property for approximately five (5) years.
18. The Board found that Mr. Kimmel testified that the Applicant's property has flooded many times and serves as a buffer for the rest of the neighborhood.
19. The Board found that Mr. Kimmel testified that his home flooded when the water from the marsh rose.
20. The Board found that Mr. Kimmel testified that the existing trees and brush on the Property serve as a buffer and he never thought the Property could be built on due to the wetlands.
21. The Board found that Mr. Kimmel testified that the Property is very wet.
22. The Board found that Mr. Kimmel testified that he believes the area is stressed and the septic system will add to that stress.
23. The Board found that Mr. Kimmel testified that the proposed dwelling could disturb a nearby osprey nest.
24. The Board found that Mr. Kimmel testified that he does not believe the Property can support a dwelling due to flooding issues.
25. The Board found that Mr. Kimmel testified that his house is on slightly higher ground than the Applicant's property and that his house was built in the 1950s and is on pilings.
26. The Board found that Ms. Frederick testified that she lives across the street from the Property and that she is concerned that Truman Avenue is narrow.
27. The Board found that Ms. Frederick testified that the proposed dwelling would hinder her ability to park her truck and boat on her property. If the Applicant parks on Truman Avenue, she would not have access to her property.
28. The Board found that Ms. Frederick testified that she has owned her property since 1991.
29. The Board found that Ms. Frederick testified that she did not realize the proposed dwelling would still be ten (10) feet from the property line, and now that she understands she has no issue with the variance request.
30. The Board found that Ms. Frederick testified that she has experienced flooding on her property.
31. The Board found that Ms. Frederick testified that the Property has always been vacant since she has owned her lot.
32. The Board found that Ms. Frederick testified that her house is not located on pilings and her house is approximately the same elevation as the Applicant's property.
33. The Board found that Ms. Frederick testified that there is a nearby osprey nest but she does not feel the proposed dwelling will be detrimental to the public welfare.
34. The Board found that Mr. Schoch testified that the Property has been approved for a peat septic system.
35. The Board found that Mr. Schoch testified that the proposed dwelling is similar to others in the neighborhood and he is not sure how the dwelling will impact flooding issues.
36. The Board tabled the discussion and vote on this matter until October 3, 2016.
37. On October 3, 2016, the Board discussed the case which had been tabled. At that meeting, Planning & Zoning Director Lawrence Lank advised the Board that the

variances from the wetland buffer requirement were not needed per Section 115-193E of the Sussex County Zoning Code, which is a grandfathering clause.

38. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, the Board determined that the application met the standards for granting a variance for a front yard setback requirement. The findings below further support the Board's decision to approve the Application.

- a. The Property is unique as it is a small lot with an unusual shape. A significant portion of the Property is also considered wetlands and is unbuildable. A portion of the buildable area of the Property is also the only area where a septic system can be installed. The location of the septic system also greatly limits the already small building envelope on the Property. Consequently, the Applicant has limited area where he could place a dwelling. It is clear to the Board that the lot's unique characteristics have created an exceptional practical difficulty for the Applicant who seeks to build a reasonably sized dwelling 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 location of the wetlands and the septic system greatly limits the buildable area of the Property and the dwelling cannot be placed on the lot to fit in compliance with the Code. The Applicant seeks to construct a reasonably sized dwelling 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 build a reasonably sized dwelling on the Property. 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 create the size of the lot or direct the placement of the septic system. The location of the wetlands further limits the buildable area of the lot. It is clear to the Board that these unique physical conditions greatly limit the buildable area of the Property and have created an exceptional practical difficulty for the Applicant. The difficulty has not been self-created.
- 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. The dwelling is a reasonably sized dwelling and will be located off of Truman Avenue, which is a small road. The neighbor most impacted by the location of the dwelling in proximity to Truman Avenue does not object to its location. The opposition raised concerns about flooding but the Board was not convinced that the existence of the dwelling in the setback area would have any additional impact on flooding than a dwelling not in the setback area. Due to the location of the wetlands and the septic system, the only area where a reasonably sized dwelling can be placed is where it is proposed to be located. Ultimately, the Board was not convinced 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 represent the least modification possible of the regulation at issue. The Applicant has demonstrated that the variance sought will allow the Applicant to build the proposed dwelling on the Property. The Board finds that the dwelling is a reasonable size and shape

and that the Applicant has attempted to minimize its intrusion into the setback area.

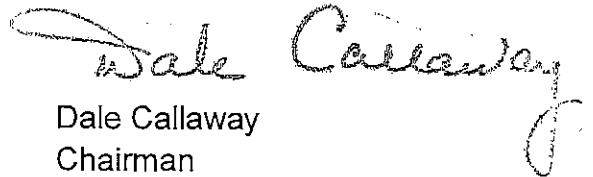
- f. The Board finds that the variance from the wetland buffer requirement is not needed because this Property was created prior to July 19, 1988. As such, this Property is grandfathered from the wetland buffer regulations under Sussex County Code § 115-193(E). Accordingly, the only variance approved by the Board is for the front yard variance from Truman Avenue for the proposed dwelling.

The Board granted the variance application in part 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 in part. The Board Members in favor were Mr. Dale Callaway, Mr. Jeff Hudson, Mr. John Mills, and Mr. Norman Rickard. No Board Member voted against the Motion to approve the variance application in part. Mr. Brent Workman was not present during the 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 December 13, 2016