

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

**IN RE: SCHELL BROTHERS, LLC**

**(Case No. 11911)**

A hearing was held after due notice on March 6, 2017. 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 8.9 feet from the fifteen (15) feet front yard setback requirement for an existing handicap ramp. This application pertains to certain real property located on the north side of Ivory Gull Way approximately 425 feet east of Tributary Boulevard in Peninsula Lakes (911 Address: 32252 Ivory Gull Way, Millsboro); said property being identified as Sussex County Tax Map Parcel Number 2-34-29.00-1286.00.

1. The Board was given copies of the Application, an aerial photograph of the Property, an undated survey, and a portion of the tax map.
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 Carmen Marinelli was sworn in to testify about the Application. Mr. Marinelli submitted pictures of the Property for the Board to review.
4. The Board found that Mr. Marinelli testified that the Applicant constructed a home for a retired, disabled veteran of the United States Air Force Air Force.
5. The Board found that Mr. Marinelli testified that the Applicant built a customized home for the customer to accommodate the customer's disability. Hallways and doors were widened in the home. The dwelling was also constructed to comply with Americans with Disabilities Act ("ADA") requirements.
6. The Board found that Mr. Marinelli testified that the customer requested a ramp for the front of the home and the ramp provides access to the home.
7. The Board found that Mr. Marinelli testified that the Applicant constructed the ramp and did not learn of the encroachment until the as-built survey was completed.
8. The Board found that Mr. Marinelli testified that the dwelling was constructed using materials similar to other homes in the neighborhood.
9. The Board found that Mr. Marinelli testified that the dwelling could not be moved closer to the rear yard.
10. The Board found that Mr. Marinelli testified that no other homes in the neighborhood have a handicap ramp.
11. The Board found that Mr. Marinelli testified that the Applicant received a temporary certificate of occupancy.
12. The Board found that Mr. Marinelli testified that the Property has since been conveyed to the customer.
13. The Board found that Mr. Marinelli testified that a right-of-way measuring 10 feet wide is located in the front yard and the existence of the right-of-way gives the front yard the appearance that it is larger than it actually is.
14. The Board found that Mr. Marinelli testified that the Applicant has not received any complaints from neighbors.
15. The Board found that no parties appeared in support of or in opposition to the Application.

16. 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 has a unique depth as the Property is only 97 feet deep as is shown on the survey. The shallowness of the Property combined with the owner's disability has created a unique situation and has created an exceptional practical difficulty. The Property has a limited building envelope which would appear to accommodate a dwelling but the owner needs a home that is compliant with the ADA. The home was, thus, custom built with wider hallways and doors to provide better the owner access in the home and a ramp was constructed to provide the owner with safe access to the home. If the Property was deeper, no variance would be needed. If the owner did not suffer from a disability, no ramp would be needed and the home could fit on the lot without a variance. It is the confluence of these factors which has created an exceptional practical difficulty for the owner.
  - 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 Property is small and shallow and these conditions have created a limited building envelope for the Applicant. The Applicant constructed a handicap ramp to provide the disabled owner with safe access to the dwelling but was unable to construct the ramp in strict conformity with the Sussex County Zoning Code. The ramp is necessary for the owner to have reasonable use of the Property because the ramp provides the owner, who uses a wheelchair, with safe access to the home. The Board is convinced that the size, shape, and location of this ramp are reasonable, which is confirmed when reviewing the survey provided by the Applicant.
  - c. The exceptional practical difficulty was not created by the owner. The owner did not create the unique size and shape of the Property. These conditions were created prior to the owner's ownership thereof. The owner, who recently acquired the Property, suffers from a disability and needs a handicap ramp. The shallow depth of the Property, however, limits the area where a handicap ramp could be placed. The owner relied on the Applicant to construct the handicap ramp in compliance with the Sussex County Zoning Code and both the Applicant believed the ramp complied with the Code only to learn after the ramp was constructed that it did not meet the front setback requirement. The Board finds that the owner did not create the exceptional practical difficulty. The owner did not create the shallow depth of the lot, construct the ramp, or create his disability. Ultimately, the unique situation and physical conditions of the Property have created the exceptional practical difficulty for the 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 ramp will have no effect on the character of the neighborhood. The ramp was constructed using materials similar to materials used in other homes in the neighborhood and the pictures presented by the Applicant confirm that the ramp is attractive. 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 front yard is approximately ten (10) feet from the edge of paving of Ivory Gull Way thereby giving the impression that the front yard is larger than it actually is.

The encroachment into the front yard setback area is, thus, unlikely to be noticed.

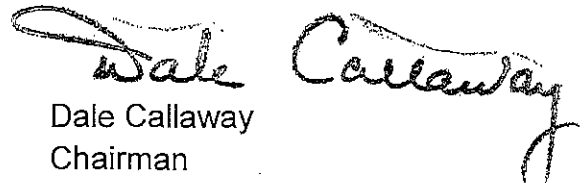
- e. The variance sought is the minimum variance necessary to afford relief and the variance requested represents the least modification possible of the regulation at issue. The Applicant has demonstrated that the variance sought will allow the owner to retain the handicap ramp on the Property. The size of the ramp is reasonable and provides the owner with safe access thereto. The Board also notes that the ramp was designed to turn and the design minimizes the encroachment into the front yard.
- f. The Board also finds that the owner suffers from a disability and that the variance approval represents a reasonable accommodation.

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 April 4, 2017