

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

**IN RE: JOHN C. SHIMROCK & MARTHA K. MARTIN**

**(Case No. 11937)**

A hearing was held after due notice on April 3, 2017. The Board members present were: Mr. Dale Callaway, Mr. John Mills, Mr. Jeff Hudson, Mr. Norman Rickard, 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 Applicants are requesting a variance of 10 feet from the thirty (30) feet front yard setback requirement for an existing dwelling. This application pertains to certain real property at the end of Back Bay Lane, north and east of Waterview Road (Road 279A) (911 Address: 21891 Back Bay Lane, Lewes); said property being identified as Sussex County Tax Map Parcel Number 2-34-12.00-78.00.

1. The Board was given copies of the Application, a portion of the tax map of the area, an aerial photograph of the Property, a survey of the Property dated August 31, 2016, a survey of the Property dated January 26, 1999, and pictures of the Property.
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 John Shimrock was sworn in to testify about the Application. Bill Schab, Esquire, presented the case on behalf of the Applicants.
4. The Board found that Mr. Schab stated that the lot is located in a small subdivision created in 1980 and the dwelling was built in 1980.
5. The Board found that Mr. Schab stated that the subdivision is required to have a cul-de-sac and the front of the Property abuts the cul-de-sac. The cul-de-sac is viewable only on paper as it was never physically created.
6. The Board found that Mr. Schab stated that the dwelling has been on the Property for 35 years and the Applicants did not place the home on the Property.
7. The Board found that Mr. Schab stated that the Property is located at the end of a private road.
8. The Board found that Mr. Schab stated that the variance requested is the minimum variance necessary to afford relief.
9. The Board found that Mr. Schab stated that the shed has been removed.
10. The Board found that Mr. Shimrock, under oath, affirmed the statements made by Mr. Schab.
11. The Board found that Mr. Schab stated that a large part of the rear yard is not buildable due to the marsh and a lagoon. There are also easements on the Property related to access to the lagoon.
12. The Board found that Mr. Schab stated that he doubts the home could have been placed any closer to the rear yard due to the marsh and lagoon.
13. The Board found that John Burton was sworn in to testify in support of the Application.
14. The Board found that Mr. Burton testified that he is the next-door neighbor. He and his neighbors have no objection to the Application.
15. The Board found that one (1) party appeared in support of the Application.
16. The Board found that no parties appeared in opposition to the Application.
17. 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 due to its unique shape and topography. The Property is located adjacent to Love Creek and a significant portion of the rear yard is unbuildable marshland or lagoon. This unique topography leaves only a small portion of the front yard which is suitable for a home. The dwelling on the Property was built in 1980 and encroaches into the front yard setback area. The physical appearance of the Property, as shown on the pictures provided by the Applicant, however, demonstrates that the home appears setback a great distance from the front property line. This discrepancy is due to the fact that a paper cul-de-sac exists for Back Bay Lane. The Property is adjacent to this paper cul-de-sac but the cul-de-sac was never built. Rather, the driveway for the Property extends to Back Bay Lane and a significant portion of the paper cul-de-sac physically appears to be the front yard of the Property. This Property is clearly unique due to its topography and the existence of the paper cul-de-sac. The topography greatly limits the buildable area of the Property and the existence of the cul-de-sac creates an oddly shaped with the actual buildable area of the Property. Ultimately, these conditions have created an exceptional practical difficulty for the Applicants who seek to retain the existing 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 Property has a unique topography and the buildable area thereof is limited due to its topography. The buildable area is also limited by the existence of a paper cul-de-sac. The Applicants seek to retain a dwelling of reasonable size but are 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 a reasonably sized dwelling to remain 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 Applicants. Notably, if the cul-de-sac did not exist, no variance would be needed. Conversely, if the rear of the Property did not consist of marshlands and a lagoon, the dwelling could have been placed closer to the rear property line. The unique conditions of the Property, however, limit where a home can be placed and the Board agrees with the Applicants' attorney that the home could not be placed elsewhere on the lot.
- c. The exceptional practical difficulty was not created by the Applicants. The Applicants did not create the unusual topography of the Property or create the paper cul-de-sac. It is clear from the record that the lot was developed many years prior to the Applicants' purchase thereof. The unique lot topography has resulted in a limited building envelope on the Property and the small building envelope has created the exceptional practical difficulty. The existence of the paper cul-de-sac has further limited the already small building envelope. The unique characteristics of the Property are clear when reviewing the survey. Additionally, the Applicants did not place the dwelling on the Property. Those structures were placed on the Property by prior owners. The Board is convinced that the exceptional practical difficulty was not created by the Applicants but was created the lot's unique characteristics and by the placement of the dwelling in the setback area by prior owners.
- 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 has been on the Property for at least thirty-seven (37) years yet no complaint has been noted in the record. If the dwelling had some negative impact on the neighborhood, the Board would expect evidence demonstrating such effect to be introduced into the record. Rather, the Board heard testimony from a neighbor that the neighbors support the variance request. Furthermore, 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.

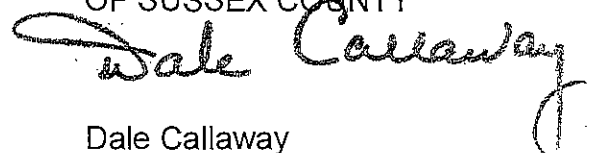
- e. The variances sought are the minimum variances necessary to afford relief and the variances requested represent the least modifications possible of the regulations at issue. The Applicants have demonstrated that the variances sought will allow the Applicants to retain a reasonably sized dwelling on the Property. No additions or modifications to the dwelling are being proposed.

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 Members 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 May 16, 2017