

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: RONALD H. NEUMAN & JOAN M. NEUMAN

(Case No. 12035)

A hearing was held after due notice on October 2, 2017. The Board members present were: Mr. Dale Callaway, Mr. Bruce Mears, Mr. John Mills, 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 Applicants are seeking a variance of 15.3 feet from the thirty (30) feet front yard setback requirement from Bay Front Road for an existing deck and a variance of 26.3 feet from the forty (40) feet front yard setback requirement from South Bay Shore Drive for an existing dwelling. This application pertains to certain real property located on the east side of South Bayshore Drive (Route 16A), approximately 1,300 feet south of Truman Avenue (911 Address: 1206 South Bay Shore Drive, Milton); said property being identified as Sussex County Tax Map Parcel Number 2-35-4.17-118.00.

1. The Board was given copies of the Application, minutes for Case No. 3445, a Certificate of Compliance dated March 17, 1999, property record information, a survey of the Property dated August 18, 2017, a survey of the Property dated September 10, 1997, 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 or in opposition of the Application.
3. The Board found that Terry Coleman was sworn in to testify about the Application. Shannon Carmean Burton, Esquire, was present to present the Application on behalf of the Applicants. Mrs. Burton submitted exhibits to the Board to review including additional property record information and affidavits from Ronald Neuman and Joan Neuman.
4. The Board found that Mrs. Burton stated that the Applicants are elderly and live in Maryland and Mr. Coleman is here on the Applicants' behalf.
5. The Board found that Mrs. Burton stated that the Applicants purchased the Property in 1997 and the Property was improved by the existing dwelling and an open deck at that time.
6. The Board found that Mrs. Burton stated that the Applicants' predecessor-in-title obtained a variance in 1987 for the dwelling and deck.
7. The Board found that Mrs. Burton stated that the Applicants enclosed the deck in 1999 and a Certificate of Compliance was issued for the enclosure.
8. The Board found that Mrs. Burton stated that the Applicants entered into a contract to sell the Property and a survey conducted prior to settlement uncovered the encroachment.
9. The Board found that Mrs. Burton stated that dwelling and deck have been in their present location since 1988.
10. The Board found that Mrs. Burton stated that the Property is unique due to its irregular shape.
11. The Board found that Mrs. Burton stated that the Property is located in Broadkill Beach.
12. The Board found that Mrs. Burton stated that the development of the Property is limited by the location of the septic system.

13. The Board found that Mrs. Burton stated that the exceptional practical difficulty was created by the unique physical conditions of the Property and the Property cannot be developed in strict conformity with the Sussex County Zoning Code.
14. The Board found that Mrs. Burton stated that the variances are necessary to enable the reasonable use of the Property.
15. The Board found that Mrs. Burton stated that the Applicants did not create the exceptional practical difficulty.
16. The Board found that Mrs. Burton stated that the Applicants relied on a contractor to enclose the deck and the Applicants reasonably believed that the structures complied with the Sussex County Zoning Code.
17. The Board found that Mrs. Burton stated that the variances will not alter the essential character of the neighborhood and the variances will not be detrimental to the public welfare.
18. The Board found that Mrs. Burton stated that the Applicants have received no complaints from neighbors about the location of the home.
19. The Board found that Mrs. Burton stated that the variances requested represent the minimum variances necessary to afford relief and the variances requested represent the least modifications of the regulations at issue.
20. The Board found that Mr. Coleman affirmed the statements made by Mrs. Burton as being true and correct.
21. The Board found that Davis Lawrence was sworn in to testify in support of the Application. Mr. Lawrence testified that he is purchasing the Property and supports the Application.
22. The Board found that one (1) party appeared in support of the Application.
23. The Board found that no parties appeared in opposition to the Application.
24. 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 Board notes that a previous variance was granted for the existing dwelling and the approval for that variance indicates that the variance was for 16 feet from the 30 feet front yard setback requirement off South Bay Shore Drive. The setback requirement is actually 40 feet so the variance should have been for 26 feet. Additionally, the home was placed 0.3 feet closer to South Bay Shore Drive than was otherwise permitted with the previous variance. The Board notes that this additional 0.3 feet encroachment is exceptionally small. The previous application also did not take into account the encroachment into the front yard setback area along Bay Front Road, which should have been addressed at that time as well.
 - b. The Property is unique as it is a small lot consisting of only 5,009 square feet. The size of the lot has created a small building envelope which is exacerbated by the fact that it is a through lot with two front yard setback areas. These conditions leave the Applicants with an extremely limited building envelope upon which to place a home and have created an exceptional practical difficulty for the Applicants who wish to retain the structures on the Property. The Board notes that the Applicants did not construct the dwelling or deck on the Property. Those structures were constructed by a prior owner and, as previously discussed, the prior owner received a variance for the dwelling. In 1999, the Applicants retained a contractor to enclose the deck along South Bay Shore Drive and they received a Certificate of Compliance at that time. This situation is, thus, quite unique and has exacerbated the problems created to the Property's unique physical conditions.

- c. Due to the uniqueness of the lot and the situation, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property is quite small and the building envelope is very limited. The building envelope is further limited by the through lot setback requirements. The Applicants seek to retain a deck and a dwelling which encroach into the setback area but are unable to do so without violating the Code. It is clear to the Board that, due to the unique conditions of the lot, the variances are necessary to enable reasonable use of the Property as a reasonably sized deck and dwelling cannot be retained on the Property without a variance. The Board is convinced that the shape and location of the deck and dwelling are reasonable, which is confirmed when reviewing the survey provided by the Applicants.
- d. The exceptional practical difficulty was not created by the Applicants. The Applicants did not create the small size of the lot and the small building envelope. These conditions have greatly limited the Applicants' ability to retain the deck and dwelling on the Property in compliance with the Sussex County Zoning Code. Moreover, the Applicants did not place the dwelling or deck on the Property. Those structures were constructed by a prior owner. While the Applicants enclosed a deck on the Property, the Applicants reasonably relied on their contractor to perform this work in compliance with the Sussex County Zoning Code and the Applicants received a Certificate of Compliance evidencing such compliance only to find out nearly 20 years later that the work did not comply with the Code. The Board is convinced that the exceptional practical difficulty was not created by the Applicants.
- e. 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 structures will have no effect on the character of the neighborhood. No complaints were noted in the record about the location of the structures and 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. The Board notes that these structures have been in their present location for decades so the lack of complaints about their locations is telling.
- f. 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 deck and dwelling on the Property. No additions to these structures are 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. Bruce Mears, Mr. John Mills, and Mr. Brent Workman. No Board Member voted against the Motion to approve the variance application. Ms. Ellen Magee did not participate in the discussion or 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 12, 2017