

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: JOE STONE & MARY LYNN STONE

(Case No. 12160)

A hearing was held after due notice on June 18, 2018. The Board members present were: Mr. Dale Callaway, Mr. Bruce Mears, Ms. Ellen Magee, Mr. John Mills, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for a variance from the front yard setback requirement for a proposed structure.

Findings of Fact

The Board found that the Applicants are seeking a variance of 5.0 feet from the thirty (30) feet front yard setback requirement for a proposed dwelling. This application pertains to certain real property located on the east side of Dune Road, approximately 121 feet south of East Bayberry Road. (911 Address: 46 Dune Road, Bethany Beach); said property being identified as Sussex County Tax Map Parcel Number 1-34-17.16-110.00.

1. The Board was given copies of the Application, a survey of the Property dated April 4, 2018, a letter from the Lochwood Property Owners Association Architectural Review Committee, an aerial photograph of the Property, a building permit application, and a portion of the tax map of the area.
2. The Board found that the Office of Planning & Zoning received two (2) letters in support of the Application and no correspondence in opposition to the Application.
3. The Board found that Greg Hastings was sworn in to testify about the Application.
4. The Board found that Mr. Hastings testified that the Applicants plan to make substantial renovations to their existing dwelling. The dwelling was built prior to 1969 and predates the Sussex County Zoning Code. The existing dwelling was also built prior to the development of the Middlesex Beach Homeowners' Association.
5. The Board found that Mr. Hastings testified that the dwelling is 23.8 feet from the front property line. The Applicants propose to renovate the dwelling such that the front of the dwelling will be 25 feet from the front property line.
6. The Board found that Mr. Hastings testified that the homeowners' association requires that, if substantial renovations are completed, the existing restrictive covenants must be met. The current setback requirement under the Middlesex Beach deed restrictions are twenty-five (25) feet from the front property line.
7. The Board found that Mr. Hastings testified that the Property is unique. The Property is adjacent to the Atlantic Ocean. The Property is subject to DNREC regulations in the rear yard and the Applicants will meet those regulations.
8. The Board found that Mr. Hastings testified that the variance will not alter the essential character of the neighborhood. Other variances have been approved in the neighborhood and the dwelling is one of the oldest homes in Middlesex Beach.
9. The Board found that Mr. Hastings testified that the Property cannot otherwise be developed and that the need for the variance was not created by the Applicants because the dwelling is already existing.
10. The Board found that Mr. Hastings testified that the variance requested is the minimum variance necessary to afford relief.
11. The Board found that Mr. Hastings testified that the average front yard setback along Dune Road is 26.7 feet.
12. The Board found that no parties appeared in support of or in opposition to the Application

13. 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 as it is developed by an existing dwelling, which was placed on the Property by a prior owner, and the dwelling is located near the front property setback line. The dwelling has been on the Property for approximately 50 years and needs substantial renovation. The Applicants seek to make those renovations but is unable to do so without violating the front yard setback requirement. The Property is also unique because approximately one-half of the lot is located within the DNREC building restriction area and no structures can be built within that area. This condition greatly limits the buildable area of the Property; particularly with regard to construction in the rear of the lot. These unique conditions have created an exceptional practical difficulty for the Applicants.
 - b. Due to the uniqueness of the Property, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Applicant seek to make substantial renovations to an existing dwelling but are 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 dwelling to renovated as proposed on the Property. The renovation will result in a dwelling that is more compliant with the Code and with homeowner association's restrictive covenants. The Board is convinced that the shape and location of the dwelling are reasonable, which is confirmed when reviewing the survey provided by the Applicants. Based on the survey, there appears no other location where the dwelling could be located.
 - c. The exceptional practical difficulty was not created by the Applicants. There was no evidence that the Applicants created the lot or developed it with the existing dwelling. Rather, the Property was developed by a prior owner. These conditions have created the exceptional practical difficulty for the Applicants who seek to make reasonable renovations to the dwelling. The location of the existing dwelling limits its options for renovation. The exceptional practical difficulty was also created by the Property's unique physical condition as the Property is adjacent to the Atlantic Ocean and a significant portion of the rear yard is unbuildable due to DNREC regulations. These conditions greatly constrain the building envelope and drive construction towards the front of the lot and away from the ocean.
 - 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 Applicants propose to substantially renovate an older dwelling and those renovations will likely improve the dwelling and benefit the neighborhood. The renovated dwelling will also be farther from the front property line than the existing dwelling thereby reducing the degree of non-conformity. The dwelling will be compliant with homeowner association restrictive covenants as well. Neighbors have indicated support for the Application and 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 survey indicates a gap between the front property line and the edge of paving of Dune Road. As such, the encroachment into the front yard setback area is

likely less noticeable than if the edge of paving matched the front property line.

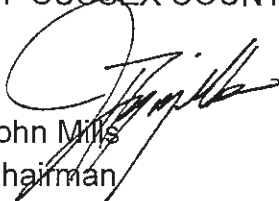
- e. The variance sought is the minimum variance necessary to afford relief and the variance requested represents the least modification possible of the regulation at issue. The Applicants have demonstrated that the variance sought will allow the Applicants to make substantial renovations to the existing dwelling on the Property. The Board notes that, as part of the renovation, the existing front yard encroachment will be reduced. The Applicants are not able to further reduce that encroachment, however, due to the DNREC building restriction in the rear of the Property. The Board finds that the Applicants have taken steps to reduce the encroachment.

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, Ms. Ellen Magee, Mr. Bruce Mears, Mr. John Mills, and Mr. Brent Workman. No Board Member voted against the Motion to approve the variance application.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY


John Mills
Chairman

If the use is not established within two (2) years from the date below the application becomes void.

Date September 11, 2018.