

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: CARLOS MARTINS

(Case No. 12175)

A hearing was held after due notice on August 6, 2018. The Board members present were: Mr. Dale Callaway, Ms. Ellen Magee, Mr. Bruce Mears, Mr. John Mills and Mr. Brent Workman.

Nature of the Proceedings

This is an application for variances from the front yard, corner front yard, and rear yard setback requirements.

Findings of Fact

The Board found that the Applicant is seeking a variance of 0.39 feet from the five (5) feet rear yard setback requirement for the second-floor deck, a variance of 4.51 feet from the fifteen (15) feet corner front setback requirement for the dwelling, and a variance of 12 feet from the thirty (30) feet front yard setback requirement for the steps and landing. This application pertains to certain real property on the northeast corner of Todd Drive and Hassel Avenue in the Bayview Park development (911 Address: 34956 Todd Drive, Bethany Beach); said property being identified as Sussex County Tax Map Parcel Number 1-34-20.12-6.00.

1. The Board was given copies of the Application, a site plan dated June 28, 2018, an aerial photograph of the Property, 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 Bryan Elliott was sworn in to testify about the Application.
4. The Board found that Mr. Elliott testified that the Property is unique because it is small and has an odd shape. The lot lines are not perpendicular and these unique angles create setback issues when designing a dwelling to comply with the setback requirements.
5. The Board found that Mr. Elliott testified that the Property cannot be otherwise developed in strict conformity with the Sussex County Zoning Code due to the odd shape of the lot and that the variances are needed to enable a reasonable use of the Property.
6. The Board found that Mr. Elliott testified that the proposed dwelling will be similar to other homes in the neighborhood.
7. The Board found that Mr. Elliott testified that the need for the variances was not created by the Applicant.
8. The Board found that Mr. Elliott testified that the variances will not alter the essential character of the neighborhood but will enhance it.
9. The Board found that Mr. Elliott testified that the variances being requested are the minimum variances necessary to afford relief.
10. The Board found that Mr. Elliott testified that the two-story dwelling has not been built.
11. The Board found that Mr. Elliott testified that the Property is located adjacent to a canal and is located in a flood zone. As such, the house will be on pilings with steps and a landing that will provide access to the home. The steps will go to the first floor of living space of the home, which is 9 feet above ground level.
12. The Board found that Mr. Elliott testified that the Property is a corner lot and there is a large gap between the edge of paving of Hassel Drive and the property line.
13. The Board found that no parties appeared in support of the Application and two (2) parties in opposition to the Application.

14. The Board found that Paul Reiger and Keith Steck were sworn in to testify in opposition to the Application. Mr. Reiger and Mr. Steck both questioned the Board's procedure, which was not specific to the Application.
15. The Board found that Mr. Reiger testified that he believes that the Applicant should build a smaller house within the building envelope.
16. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, which the Board weighed and considered, 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 size and shape and due to the fact that the Property is a corner lot within a flood zone. The Property is quite small as evidenced by the survey and the lot is not square. The Property consists of only 5,227 square feet. The unique characteristics of this Property limit the buildable area available to the Applicant and have created an exceptional practical difficulty for the Applicant who seeks to construct a house, deck, steps, and landing 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 size and shape and the buildable area thereof is limited due to these conditions. The building envelope is further constrained by the fact that the Property is a corner lot subject to flood zone restrictions. The house must be elevated to meet the flood zone requirements. The Applicant seeks to construct a house, deck, steps, and landing on the lot but is 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 these reasonably sized structures to be constructed on the lot. The Board is convinced that the shape and location of these structures 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 unusual size and shape of the Property. The unique lot size and shape have resulted in a limited building envelope on the Property and the small building envelope has created the exceptional practical difficulty. The unique characteristics of the Property are clear when reviewing the survey. The limited building envelope was further restrained by the fact that the Property is a corner lot in a flood zone. The Board is convinced that the exceptional practical difficulty was not created by the Applicant but was created the lot's unique characteristics.
 - d. 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. The structures are similar to others in the neighborhood and no concerns were raised by neighbors. The only substantive concern raised by a member of the opposition came from a party who does not live in the neighborhood. The opposition presented no evidence or testimony which demonstrated that the variances would somehow alter the essential character of the neighborhood. The Board also notes that the rear yard variance is only 0.39 feet and is likely unnoticeable by neighbors. Furthermore, the edge of paving of Hassell Drive does not match the corner front property line and the edge of paving of Todd Drive does not appear to match the front property line either. As such, the encroachments into those

setback areas are likely not as noticeable due to the gap between the actual road and the front property line.

- 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 Applicant has demonstrated that the variances sought will allow the Applicant to construct a house, deck, steps, and landing on the lot. The Board is convinced that the Applicant has worked with professionals to minimize the encroachments into the setback areas.

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 October 2, 2018.