

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

**IN RE: SEDAT ELMALI**

**(Case No. 12263)**

A hearing was held after due notice on February 4, 2019. The Board members present were: Mr. Dale Callaway, Ms. Ellen Magee, Mr. John Mills, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for variances from the front yard setback requirement for existing structures.

Findings of Fact

The Board found that the Applicant is seeking a variance of 11.5 feet from the thirty (30) feet front yard setback requirement for an existing porch, a variance of 10.3 feet from the thirty (30) feet front yard setback requirement for an existing dwelling, and a variance of eight (8) feet from the thirty (30) feet front yard setback requirement for existing steps. This application pertains to certain real property that is a through lot on the southeast side of Blue Bird Lane approximately 0.19 miles west of Coastal Highway (Route 1) (911 Address: 19708 Blue Bird Lane, Rehoboth Beach); said property being identified as Sussex County Tax Map Parcel Number 3-34-13.00-311.02.

1. The Board was given copies of the Application, a survey of the Property dated November 26, 2018, elevation drawings of the dwelling and porch, 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 the Application or in opposition to the Application.
3. The Board found that Sedat Elmali was sworn in to give testimony about the Application.
4. The Board found that Mr. Elmali testified that the house was existing when he purchased the Property and the house was built too close to the front property line.
5. The Board found that Mr. Elmali testified that it is inconvenient to use the front door without a porch and that the variances are necessary to enable reasonable use of the Property.
6. The Board found that Mr. Elmali testified that the Property was previously improved by an open, concrete porch, which encroached into the setback area, and he replaced the porch with a slightly larger covered porch to provide cover when accessing the home. These improvements were made in 2009. He received a permit for the porch renovation and it passed inspection.
7. The Board found that Mr. Elmali testified that there is a gap between the front property line and edge of paving of Blue Bird Lane.
8. The Board found that Mr. Elmali testified that there have been no complaints from neighbors.
9. The Board found that Mr. Elmali testified that the Property is unique as it is on a cul-de-sac located next to storage units.
10. The Board found that Mr. Elmali testified that the house was placed to the front of the property making it impossible to build the porch without the variance.
11. The Board found that Mr. Elmali testified that the exceptional practical difficulty was not created by the Applicant as the house was on the Property when he purchased it.
12. The Board found that Mr. Elmali testified that Blue Bird Lane is a paper road.

13. The Board found that Mr. Elmali testified that the porch measures 10 feet by 6 feet and the porch is tied into the roof of the dwelling.
14. The Board found that Mr. Elmali testified that the variances will not alter the character of the neighborhood as the wooden porch is more attractive than the concrete porch.
15. The Board found that Mr. Elmali testified that the variances are the minimum variances necessary to afford relief.
16. The Board found that Casey Kenton, who is a member of the group that owns the neighboring storage center, was sworn in to testify in support of the Application. He noted that the Property is located at the end of Blue Bird Lane.
17. The Board found that one person appeared in support of and no one appeared in opposition to the Application.
18. 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 odd shape. The Property is significantly shallower on the south side than the north side and this shallow depth has resulted in an odd and limited building envelope. The situation is also unique as the Property was developed by a dwelling prior to the Applicant's purchase of the Property. A small portion of the house encroaches into the setback area and a front porch and steps accessing the home also encroach into the setback area. These unique conditions, which are clear on the survey, have created an exceptional practical difficulty for the Applicant who seeks to retain these structures on the lot.
  - b. Due to the uniqueness of the Property, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Applicant seeks to retain an existing dwelling, porch, and steps on the Property 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 the Applicant to retain those structures on the lot. The Board is convinced that the size, shape, and location of the structures are reasonable. The Board notes that the porch and steps provide reasonable access to the dwelling and the covering of the porch allows for adequate protection from the elements when entering the home.
  - c. The exceptional practical difficulty was not created by the Applicant. The owner of the Property did not create the odd shape of the Property and the Property was already developed with the existing dwelling at the time he acquired the lot. The Property was also developed with an encroaching open porch which has since been renovated. The unique shape of the lot has created an exceptionally limited building envelope. This difficulty was exacerbated by the location of the dwelling which may predate the enactment of the Sussex County Zoning Code. It is thus clear to the Board that these conditions have created the exceptional practical difficulty for the Applicant who seeks to retain the existing structures on the Property and that the exceptional practical difficulty was not created by the Applicant.
  - 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 variances will have no effect on the character of the neighborhood. There was no evidence of any impact on neighboring properties. The Board also notes that the record indicates a significant gap

between the front property line and the edge of paving of Blue Bird Lane. Notably, Blue Bird Lane is a dead end road and the Property is located at the end of the road. As such, the encroachments into the front yard setback area along Blue Bird Lane are likely less noticeable than if the edge of paving matched the front property line. The neighbor most impacted by the variance requests has indicated support of the Application.

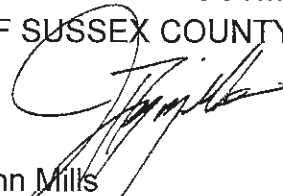
- e. The variances sought are the minimum variances necessary to afford relief and the variances requested represent the least modifications possible of the regulations at issue. The Applicant has demonstrated that the variances sought will allow the Applicant to retain existing structures on the Property. No additions or modifications to those 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. John Mills, and Mr. Brent Workman. Ms. Ellen Magee 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 March 19, 2019.