

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

**IN RE: MICHAEL P. STRUNK**

**(Case No. 12289)**

A hearing was held after due notice on April 1, 2019. The Board members present were: Mr. Dale Callaway, Ms. Ellen Magee, Mr. John Mills, Mr. John Williamson, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for variances from the side yard and rear yard setback requirements for proposed and existing structures.

Findings of Fact

The Board found that the Applicant is requesting a variance of 6 feet from the twenty (20) feet rear yard setback requirement for the existing house. A variance of 0.5 feet from the 10 feet side yard setback requirement on the north side for the existing house and a variance of 6.3 feet from the twenty (20) feet rear yard setback requirement for the existing house are also needed but those variances can be handled through the administrative variance process pursuant to County Code §115-181(e)(7) because a certificate of compliance was issued for the dwelling. The Property is on the east side of Woodland Circle approximately 378 feet south of Dogwood Drive within the Angola by the Bay Subdivision (911 Address: 34124 Woodland Circle, Lewes) said property being identified as Sussex County Tax Map Parcel Number: 2-34-12.17-69.00.

1. The Board was given copies of the Application, a survey of the Property dated October 24, 2016, drawings of the proposed addition, property record card information, 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 one (1) letter in support of the Application and no letters in opposition to the Application.
3. The Board found that Michael Strunk was sworn in to testify about the Application.
4. The Board found that Mr. Strunk testified that he has owned the Property since November 2016 and it is currently a vacation home. Mr. Strunk and his family plan to move to the Property as a full-time residence and need the addition to make it comfortable for his family.
5. The Board found that Mr. Strunk testified that the Property is located in Angola by the Bay and the home was built in 1979 by a prior owner. The property is a double lot but the house does not meet setback requirements. Mr. Strunk only recently learned of the existing encroachments.
6. The Board found that Mr. Strunk testified that the addition has been designed so that the only portion that needs a variance is the master bedroom addition. Most of the addition will be built within the setbacks and will be built towards the center of the lot. According to Mr. Strunk, the addition cannot be constructed in the other direction.
7. The Board found that Mr. Strunk testified that the homeowners association has approved the design and advised the Applicant to apply to Sussex County for the necessary variances. Neighbors also support the Application.
8. The Board found that Mr. Strunk testified that no variance is needed for the sheds as they will be removed.
9. The Board found that Mr. Strunk testified that the variances requested are the minimum variances to afford relief.

10. The Board found that Mr. Strunk testified that the Property is unique because it is shallow and small. The Property is also unique because it was developed with the existing house many years ago by a prior owner.
11. The Board found that Mr. Strunk testified that the Property cannot otherwise be developed because of the placement of the current home.
12. The Board found that Mr. Strunk testified that this practical difficulty was not created by the Applicant but by the original owner when they built the home in 1979.
13. The Board found that Mr. Strunk testified that the variances will not affect the essential character of the neighborhood as there are many homes with reduced rear yard setbacks and the improvements will increase property values in the area.
14. The Board found that Errol Gambler and Virginia Ritchie were sworn in to give testimony about the Application. Both Mr. Gambler and Ms. Ritchie own nearby properties and they support the Application. Ms. Ritchie noted that the addition will increase property values in the area.
15. The Board found that two (2) parties appeared in favor of the Application and no parties appeared in opposition to the Application.
16. 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 a small and shallow lot with a dwelling which has been on the Property for 40 years. These conditions make it impossible for the Applicant to construct a reasonable addition without encroaching into the setback areas. As such, these unique conditions have created an exceptional practical difficulty for the Applicant.
  - b. Due to the uniqueness of the Property and situation, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The dwelling was constructed by a prior owner and the Applicant seeks to construct a reasonable addition 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 addition to be constructed on the Property. The Board is convinced that the shape and location of the addition are reasonable, which is confirmed when reviewing the survey provided by the Applicant. The addition will also afford the Applicant with additional living space to accommodate his family.
  - c. The exceptional practical difficulty was not created by the Applicant. The Property has unique physical conditions, as discussed above, and those conditions have limited the building envelope on the Property and have created an exceptional practical difficulty. Importantly, the Applicant did not develop the Property with the dwelling. Rather, the dwelling was placed on the Property by a prior owner. The Applicant is unable to construct this reasonable addition in compliance with the Code due to the existing layout of the home.
  - 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 dwelling has been on the Property for many years and the Applicant seeks to add a reasonable addition to the home. Neighbors and the homeowners association have indicated support of the proposal. The Board also notes that the home has been in its existing location for many years without a complaint noted in the record. The lack of complaints is telling since, if the

home had some adverse effect on the neighborhood, the Board would have expected some evidence of that effect. Ultimately, no evidence was presented that the addition or the existing structures would somehow alter the essential character of the neighborhood or be detrimental to the public welfare. The Board also notes that the homeowners association appears to have a process for regulating improvements within the community and the Applicant will likely have to receive additional approvals through that process.

- e. The variance sought is the minimum variance necessary to afford relief and the variance requested represent the least modification possible of the regulation at issue. The Applicant has demonstrated that the variance sought will allow the Applicant to construct a reasonable addition to the home and to retain the existing house. The Board is convinced that the Applicant took steps to minimize the encroachment by constructing the addition towards the center of the Property. The Board also notes that the Applicant was unable to construct the addition elsewhere on the lot due to the existing layout of the home. Lastly, the Applicant has reduced the need for variances by removing the sheds from the Property as well.

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. John Mills, Mr. John Williamson, 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 June 4, 2019.