

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: FRANK T. ENGLISH

(Case No. 12376)

A hearing was held after due notice on November 4, 2019. The Board members present were: Dr. Kevin Carson, Mr. Jeff Chorman, Ms. Ellen Magee, Mr. John Williamson, and Mr. Brent Workman.

Nature of the Proceedings

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

Findings of Fact

The Board found that the Applicant is requesting a variance of 8.2 feet from the thirty (30) feet front yard setback requirement for an existing landing and steps and a variance of 3.9 feet from the thirty (30) feet front yard setback requirement for an existing porch. This application pertains to certain real property located on the east side of South Bay Shore Drive approximately 1 mile south of Bay Front Road (911 Address: 2806 South Bay Shore Drive, Milton) said property being identified as Sussex County Tax Map Parcel Number 2-35-10.00-13.00. After a hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a survey of the property dated August 29, 2019, a drawing of the residence, property record information, a map of the area, aerial photographs 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 Laurie Bronstein and Paul Weber were sworn in to give testimony about the Application. Mr. Chad Meredith, Esquire, presented the Application on behalf of the Applicant and submitted photographs of the subject property and emails in support of the Application to Board members.
4. The Board found that Mr. Meredith recited an affidavit from Frank English, the previous owner of the property, and submitted the affidavit into the record.
5. The Board found that Mr. Meredith stated that the second floor of the house is considered the first floor because the house is built on pilings.
6. The Board found that Mr. Meredith stated that other homes in the neighborhood are similarly situated.
7. The Board found that Mr. Meredith stated that the house was built in 1985.
8. The Board found that Mr. Meredith stated that the Property is unique as it is located along the Delaware Bay and it is in a flood zone with dunes in the rear yard.
9. The Board found that Mr. Meredith stated that the Property cannot be otherwise developed as it was developed in 1985.
10. The Board found that Mr. Meredith stated that there have been no alterations to the exterior of the home since that time.
11. The Board found that Mr. Meredith stated that the Applicant hired a contractor to build the home and the Applicant was unaware that the house was not in compliance with County Code until the recent sale.
12. The Board found that Mr. Meredith stated that the variances will not alter the character of the neighborhood as it has been in place for over 30 years.
13. The Board found that Mr. Meredith stated that the variances requested are the minimum variances to afford relief and for all the dwelling and its features to remain in the current location.

14. The Board found that Ms. Bronstein testified that she is a real estate agent who focuses on Delaware beach properties and that she is familiar with the lot. She represented Mr. English in the sale of the property and she testified that Mr. English was stunned that a variance was needed.
15. The Board found that Ms. Bronstein testified that the variances will have no adverse impact on the neighborhood and there is no impact on the character of the neighborhood.
16. The Board found that Ms. Bronstein testified that the septic system is located in the front yard and the steps cannot be moved.
17. The Board found that Ms. Bronstein testified that there is a DNREC building restriction line in the rear of the Property.
18. The Board found that Ms. Bronstein affirmed the statements made by Mr. Meredith as true and correct.
19. The Board found that one person appeared in support of and no parties appeared in opposition to the Application
20. 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 for the variances 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. The Property is in a flood zone and is subject to building restrictions due to DNREC requirements. These restrictions and flood zone requirements greatly limit the building envelope; particularly to the rear of the lot. These limitations put a particularly strain on the lot because the lot is not large. The lot consists of only 10,202 square feet and, if the lot was 203 square feet smaller, it would be considered a small lot with lesser setback requirements. The Property is also unique as it has been historically developed by these structures which encroach into the setback area. These unique characteristics of this Property have created an unnecessary hardship and exceptional practical difficulty for the Applicant who seeks to retain existing structures on the lot.
 - b. The unnecessary hardship and exceptional practical difficulty are not being created by the provisions of the Sussex County Zoning Code.
 - c. Due to the uniqueness of the lot, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property has unique physical characteristics and the buildable area thereof is limited due to those characteristics. The Applicant seeks to retain existing structures 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 remain 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.
 - d. The unnecessary hardship and exceptional practical difficulty were not created by the Applicant. The Property is subject to building restrictions due to the flood zone and DNREC building requirements. These conditions, as previously noted, greatly impact the ability to build in the rear yard. These conditions have resulted in a limited building envelope on the Property and have created the unnecessary hardship and exceptional practical difficulty. Furthermore, the structures were constructed by a builder and the Applicant was unaware that the structures were not built in compliance with the Sussex County Zoning Code.
 - 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. The structures have been their present location since 1985 and there were no complaints noted in the record about those structures. No evidence was presented that the variances would somehow alter the essential character of the neighborhood. The lack of evidence is telling since, if the structures had somehow altered the essential character of the neighborhood, the Board would expect some evidence thereof. Rather, the Applicant submitted evidence of support from neighbors for the request.

- 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 Applicant has demonstrated that the variances sought will allow the Applicant to retain existing structures on the lot. No additions or modifications to those structures are proposed.
- g. The condition or situation of the Property and the intended use of the Property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the Sussex County Zoning Code.

The Board approved 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 of the motion to approve were Dr. Kevin Carson, Mr. Jeffrey Chorman, Ms. Ellen Magee, 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



Ellen M. Magee
Chair

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

Date January 7, 2020