

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: ROLLIN BELL & LISA BELL

(Case No. 12587)

A hearing was held after due notice on August 2, 2021. The Board members present were: Dr. Kevin Carson, Mr. Jeff Chorman, Mr. John T. Hastings, Mr. John Williamson, and Mr. Jordan Warfel.

Nature of the Proceedings

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

Findings of Fact

The Board found that the Applicants are seeking a variance of 10 feet from the fifteen (15) feet corner front yard setback requirement for a proposed cantilevered 2nd floor balcony and variance of 5 feet from the from the fifteen (15) feet corner front yard setback requirement for proposed balconies on the 3rd and 4th floor. These structures would be located on the north side of the Property. This application pertains to certain real property located on the corner of Beach Ave. and Pierce Avenue approximately 818 feet east of Coastal Highway (Route 1) (911 Address: 2 Beach Avenue, Rehoboth Beach); said property being identified as Sussex County Tax Map Parcel Number 3-34-23.06-93.00. After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, an aerial photograph of the Property, property record and deed information, a survey of the Property dated April 19, 2021, DNREC approval documentation, Findings of Fact for Case No. 12425, letters of support of the Application, and a portion of the tax map of the area.
2. The Board found that the Office of Planning & Zoning received three (3) letters in support of and no correspondence in opposition to the Application.
3. The Board found that Rollin Bell was sworn in to give testimony about the Application. Mackenzie Peet, Esquire, appeared on behalf of the Applicants.
4. The Board found that Ms. Peet stated that the Applicants are requesting variances for balconies to be located on the north side of the dwelling at 2 Beach Avenue.
5. The Board found that Ms. Peet stated that the front of the Property is considered to be the Atlantic Ocean and that there is a corner front setback of 15 feet which is creating this request for a variance.
6. The Board found that Ms. Peet stated that the Bells were previously before this Board for a variance from Pierce Avenue for an elevator to accommodate elderly grandparents and a variance to bring the existing dwelling into compliance with County Code. Those variances were granted in March 2020.
7. The Board found that Ms. Peet stated that, in addition to getting Board approval, the Applicants also had to go through the DNREC 4-step process of approval which involved the Regulations Governing Beach Protection and the Use of Beaches and was approved. She noted that the DNREC approval is valid for one year and that approval lapsed during the Covid-19 pandemic.
8. The Board found that Ms. Peet stated that the Applicants decided that it would be more economical for them to build a new home than to renovate the existing home and they had to go through the DNREC 4-step process again.

9. The Board found that Ms. Peet stated that the Applicants have received DNREC approval for the plans for a new home but the house cannot be placed closer to the east due to DNREC requirements.
10. The Board found that Ms. Peet stated that the lot is unique because it is a corner lot restricting the buildable lot area.
11. The Board found that Ms. Peet stated that the DNREC building restriction line restricts the placement of the proposed cantilevered balconies on this property. She noted that the angle of the DNREC restriction line from the southeast to northwest further restricts the Property in comparison to the immediate neighbor to the south, which is the Property that sets the parameters for DNREC's 4-step process.
12. The Board found that Ms. Peet stated that, because the DNREC building restriction line goes from southeast to northwest, it creates a restricted and reduced buildable lot area compared to the adjacent property to which the Bells must conform.
13. The Board found that Ms. Peet stated that, given the DNREC building restriction limitations and regulations governing Beach Protection and Use in effect since August 11, 2016, all structures, including the cantilevered balconies, must be constructed seaward of the DNREC building restriction line and be above Base Flood Elevation.
14. The Board found that Ms. Peet stated that, given these regulations, there is no possibility that the Property can be developed in strict conformity with the provisions of the Sussex County Zoning Code.
15. The Board found that Ms. Peet stated that the exceptional practical difficulty was not created by the Applicants but by the location of the existing home in the setback and the requirement that the cantilevered balconies be constructed seaward of the DNREC building restriction line.
16. The Board found that Ms. Peet stated that the proposed cantilevered balconies will not alter the essential character of the neighborhood as the Applicants' existing dwelling and proposed improvements are in character with the neighborhood. She noted that there is a neighbor to the north with similar balconies to the proposed balconies and that the Applicants have included letters of support from neighbors with their Application.
17. The Board found that Ms. Peet stated that visibility will not be an issue as cantilevered balconies are designed for maximum visibility.
18. The Board found that Ms. Peet stated that Beach Avenue is mainly used for pedestrian traffic as access to the beach and is not used in the regular sense of a corner lot which is usually on the corner of two busy roads.
19. The Board found that Ms. Peet stated that the variances are the minimum variances needed to construct the proposed balconies on the north side of the Property.
20. The Board found that Ms. Peet stated that the footprint of the proposed dwelling is smaller than the existing dwelling.
21. The Board found that Ms. Peet stated that the proposed dwelling will meet all setbacks except for the elevator which has approval from Board Case No. 12425.
22. The Board found that Mr. Bell affirmed the statements made by Ms. Peet as true and correct.
23. The Board found that Mr. Bell testified Beach Avenue is an actual road but turns into sandy beach access approximately 20 feet from his dwelling.
24. The Board found that no one appeared in support of or in opposition to the Application.
25. 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 long, narrow lot subject to significant DNREC building restrictions. The Property is adjacent to beaches of the Atlantic Ocean and much of the easterly side of the lot is undevelopable due to the DNREC building restrictions. As such, the proposed dwelling is pushed towards the western side of the Property adjacent to Pierce Avenue. The Applicants seek to construct balconies but are unable to do so within the building envelope. The Property's unique conditions have thus created an unnecessary hardship and exceptional practical difficulty for the Applicants who seek to construct balconies off the proposed house.
- 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 Property and the situation, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Applicants seek to construct balconies but are unable to do so while complying with the Sussex County Zoning Code. The Board is thus convinced that the variances are necessary to enable the reasonable use of the Property as the variances will allow the Applicants to construct the balconies on the lot. The Board is convinced that the size, shape, and location of the structures are reasonable.
- d. The unnecessary hardship and exceptional practical difficulty were not created by the Applicants. As discussed above, the Property has unique conditions which have limited the Applicants' ability to reasonably develop the Property. The Applicants did not create the unique conditions of the lot. The Board was convinced that the Applicants have not created the exceptional practical difficulty and unnecessary hardship. Furthermore, the Board is convinced that the Applicants did not come to the Property with an illegal use in mind. Rather, the Applicants are limited by the physical conditions of the Property and the Applicants need the variances in order to reasonably develop the Property as proposed. The Board notes that the proposed dwelling is smaller than the prior home on the lot and, except for the elevator, will otherwise comply with the setback requirements.
- 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 variances will have no effect on the character of the neighborhood. The variances will allow the Applicants to construct reasonably sized balconies off the house. The balconies will be adjacent to a sandy walkway that is considered a road. There were no complaints about the location of the structure. Likewise, there was no objection to the proposed addition and no evidence was presented which demonstrate that the variances would somehow alter the essential character of the neighborhood or be detrimental to the public welfare. Rather, the Board received letters of support from neighbors about the Application.
- 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 Applicants have demonstrated that the variances sought will allow the Applicants to build reasonably sized balconies.
- 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 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 Dr. Kevin Carson, Mr. Jeffrey Chorman, Mr. Travis Hastings, Mr. John Williamson, and Mr. John Williamson. No Board Member voted against the motion to approve Application.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY



John Williamson
Chair

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

Date October 18, 2021