

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

**IN RE: JON BINNIX**

**(Case No. 12594)**

A hearing was held after due notice on August 16, 2021. The Board members present were: Dr. Kevin Carson, Mr. Jeff Chorman, Mr. John T. Hastings, Mr. Jordan Warfel, and Mr. John Williamson.

Nature of the Proceedings

This is an application for variances from side yard setback requirement for proposed structures.

Findings of Fact

The Board found that the Applicant is requesting variances of 2.3 feet, 2.9 feet, and 3.3 feet from the five (5) feet side yard setback requirement on the east side for the proposed steps and landing. This application pertains to certain real property located on the north side of Piney Point Road within the Piney Point Subdivision (911 Address: 38222 Piney Point Road, Ocean View); said property being identified as Sussex County Tax Map Parcel Number 1-34-9.00-221.00. 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, a site plan of the Property dated June 15, 2021, drawings of the proposed steps, a partition plat dated January 19, 2021, a block survey plat dated February 23, 2021, photographs, and a portion of the tax map of the area.
2. The Board found that the Office of Planning & Zoning received no letters in support of or in opposition to the Application.
3. The Board found that Jon Binnix was sworn in to testify about the Application. Mr. Binnix submitted an exhibit to the Board to review.
4. The Board found that Mr. Binnix testified that he is applying for a variance because he is proposing to place steps off the existing house so that the railing will not block the view of the door. He admitted that the aesthetics are the primary reason for the request.
5. The Board found that Mr. Binnix testified that the Property is unique in that the front of the house faces the side road.
6. The Board found that Mr. Binnix testified that the Property is very narrow; though he admitted that the lot benefits from the small lot ordinance.
7. The Board found that Mr. Binnix testified that the house is under roof and is the same as on the permit.
8. The Board found that Mr. Binnix testified that this request is for an open staircase from the front door.
9. The Board found that Mr. Binnix testified that this request will not alter the character of the neighborhood but enhance this older neighborhood.
10. The Board found that Mr. Binnix testified that the house is in a flood zone and the variances will not affect traffic or create any visibility issues.
11. The Board found that Mr. Binnix testified that there is no opposition from neighbors.
12. The Board found that Mr. Binnix testified that this request is the minimum only for the steps.
13. The Board found that Mr. Binnix testified that the pilings were set to 11 feet and that there is 12 feet from the ground to the door.
14. The Board found that Mr. Binnix testified that his design looks better and is already under construction but he was in a hurry to build the house.

15. The Board found that Mr. Binnix testified that there is a canal to the rear and the house faces the east.
16. The Board found that Mr. Binnix testified that the Property is served by public sewer and the well is on the southeast corner of the lot.
17. The Board found that Mr. Binnix testified that the rail will be a 36 inch composite rail and the steps will come straight out from the house, down to a landing and then continue towards the south property line. He wants to have a nice entry way. He noted that there will be no steps towards the north as it would block the access to the garage.
18. The Board found that Mr. Binnix testified that the homeowners association owns land to the east and there is a private road there. He noted that there is not much traffic on the private road.
19. The Board found that Mr. Binnix testified that he is using the existing driveway and has not explored if he has a legal right to access the Property through property owned by Eagle Pond Homeowners Association.
20. The Board found that Mr. Binnix testified that there is an old boat ramp at the end of the easement.
21. The Board found that Mr. Binnix testified that the garage is located in the same spot as it was previously and he used the private road for access to the prior dwelling.
22. The Board found that Mr. Binnix testified that he removed the prior home and garage.
23. The Board found that Mr. Binnix testified that he had a blank slate to work with when designing this home and that the small lot ordinance did help when designing the house.
24. The Board found that Mr. Binnix testified that he does not want to block the view of the front door.
25. The Board found that Mr. Binnix testified that, if the Application is denied, he will look at other options.
26. The Board found that no one appeared in support of or in opposition to the Application.
27. 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 failed to meet the standards for granting a variance. The findings below further support the Board's decision to deny the Application.
  - a. The Applicant failed to demonstrate that the Property was unique and that the uniqueness of the Property has created an exceptional practical difficulty. The lot is a small but rectangularly shaped lot and the lot benefits from reduced setback requirements under the small lot ordinance and the average front yard setback requirements. These provisions greatly enhance the size of the building envelope for the Property. The Property was previously developed with a house and garage but the Applicant removed those structures and had a "blank slate" upon which to design his new home. Rather than design a home in compliance with the Code, the Applicant has designed a home that requires variances into the side yard setback area. The Applicant did not present evidence of unique topography or other conditions which would effectively limit his ability to develop the Property and which created an exceptional practical difficulty. Rather, the difficulty is clearly the result of the Applicant's intention to construct the steps and landing within the setback area. The apparent reason for this request is an aesthetic reason and has nothing to do with the conditions of the lot. Quite simply, there appears to be room to place a set of steps and landing on the lot; albeit not in the Applicant's preferred location. As such, the Applicant has failed to demonstrate that there was some unique condition which has created the exceptional practical difficulty.

- b. The Applicant failed to prove that the Property could not be developed in strict conformity with the Sussex County Zoning Code. The Property has buildable area to the side of the house where steps could likely be placed but the Applicant chose to extend the steps out beyond the setback area. As a result, most of the steps will be located outside the building envelope even though there is room on the lot to place steps and a landing on the lot. Rather than comply with the Code, the Applicant proposes this variance so that his view will not be blocked. It is clear that the Applicant has chosen not to build in strict conformity with the Code rather than developing the lot to comply with the Code's setback requirements. While the location of the steps and landing, may not be the location the Applicant prefers, the Applicant failed to demonstrate that he could not otherwise comply with the Code's setback requirements. The Applicant is not entitled to have a set of steps and landing in this location. For these reasons, the Board finds that the Property could be developed in strict conformity with the Code and that the variances are not necessary to enable reasonable use of the Property.
- c. The Board finds that the Applicant is creating his own exceptional practical difficulty by proposing to construct a set of steps and landing which do not fit within the building envelope. The Applicant's decision to construct these structures in this location is the reason for the need for a variance and has nothing to do with the size, shape, or condition of the Property. There is no unusual condition to the Property which has created this difficulty. The building envelope appears to otherwise be able to fit these structures, albeit in a location which differs from the Applicant's preference, without the need for the variance. The Board was not convinced that the variance request was the product of a *need*. Instead, the variance request appears to be the product of a *want* as the Applicant seeks to build the set of steps and landing as proposed for purposes of convenience, profit, and / or caprice. Since the Applicant can develop the Property in compliance with the Sussex County Zoning Code, the need for the variance is something created by the Applicant's wants rather than an unusual physical condition relating to the Property. The Applicant has thus created his own exceptional practical difficulty.
- d. Since the variances are not necessary to enable the reasonable use of the Property, the Board also finds that the variances requested are not the minimum variances necessary to afford relief. The Applicant testified that he simply wants the variances for aesthetic reasons and he did not indicate that the steps could not comply with the Code. Furthermore, the Board finds that no variance is needed to afford relief since there is space to place the steps and landing on the Property in compliance with the Sussex County Zoning Code.

The Board denied the variance application finding that it failed to meet the standards for granting a variance.

Decision of the Board

Upon motion duly made and seconded, the variance application was denied. The Board Members in favor of the Motion to deny were Dr. Kevin Carson, Mr. Jeffrey Chorman, Mr. Travis Hastings, Mr. Jordan Warfel, and Mr. John Williamson. No Board Member voted against the Motion to deny the variance 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.