

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: EDWIN KELLY & CANDICE KELLY

(Case No. 12655)

A public hearing was held after due notice on February 21, 2022. 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 the front yard setback requirement for proposed structures.

Findings of Fact

The Board found that the Applicants are requesting the following variances:

1. A variance of 10 feet from the forty (40) feet front yard setback requirement from Coastal Highway for a proposed second floor deck; and
2. A variance of 8 feet from the forty (40) feet front yard setback requirement from Coastal Highway for proposed steps.

This application pertains to certain real property that is a through lot located on the east side of Cove Way and the west side of Coastal Highway within the Cotton Patch Hills Subdivision (911 Address: 29563 Cove Way, Bethany Beach); said property being identified as Sussex County Tax Map Parcel Number 134-5.00-138.00 ("the Property"). After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, aerial photographs of the Property, a survey of the Property dated May 29, 2018, a setback information request form, building schematics, 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 the Application.
3. The Board found that Steve Benton, who is the Applicant's contractor, and Ed Kelly were sworn in to give testimony about the Application. Mr. Kelly submitted exhibits to the Board.
4. The Board found that Mr. Kelly testified that their homeowners association approved the proposal contingent on County approval and the homeowners association setback requirement is 25 feet and the structures meet that requirement.
5. The Board found that Mr. Kelly testified that there are other homes within the neighborhood that are within the setbacks and that a neighbor has a deck which projects beyond 40 feet. He noted that there is at least one other home with a deck and jacuzzi as well.
6. The Board found that Mr. Kelly testified that the house on the other side of his neighbor has a first-floor deck.
7. The Board found that Mr. Kelly testified that some of the trees are on the Property and some are not and there is a large buffer of trees on the back yard. He noted that all the trees block views and noise from Coastal Highway.
8. The Board found that Mr. Kelly testified that he spoke with the neighbors and they have no issue with his variance request.

9. The Board found that Mr. Kelly testified that the Property is served by central water and sewer.
10. The Board found that Mr. Kelly testified that the size of the deck is fairly typical of his community.
11. The Board found that Mr. Kelly testified that he bought the Property "as is" two years ago. The home was built by a prior owner.
12. The Board found that Mr. Kelly testified that the Property is a through lot.
13. The Board found that Mr. Kelly testified that, in order to accomplish what he is trying to, this is the minimum deck size.
14. The Board found that Mr. Benton testified that the house exists and there is already a deck at the setback line and that the Applicants are requesting a 10 foot variance to expand the deck.
15. The Board found that Mr. Benton testified that the property line to the road edge is approximately 30 feet. He further noted that the house is 48 feet to the property line and is 85 to 90 feet to the edge of paving of Coastal Highway.
16. The Board found that Mr. Benton testified that the steps are set in about 2 feet and that the variance needed for the steps is 8 feet.
17. The Board found that Mr. Benton testified that, due to the size of the hot tub, this request is the minimum size deck for safety reasons. He noted that the Applicants need an area around the hot tub to walk around.
18. The Board found that no one appeared in support of or in opposition to the Application.
19. 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 lot with road frontages on two roads and is subject to two front yard setback requirements even though the Property only has vehicular access from Cove Way. The portion of the Property along Coastal Highway is effectively the rear yard of the lot but is subject to front yard setback requirements. These conditions greatly restrict the building envelope on the Property. While the Property is considered a through lot, the Applicant does not have direct access to Coastal Highway and only access the Property from Cove Way. The existing dwelling was also built by a prior owner which limits how the Applicants can reasonably develop the Property. It is clear to the Board that the lot's unique characteristics have created an unnecessary hardship and exceptional practical difficulty for the Applicants who seeks to construct a deck addition and steps 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 is bordered on two sides by roads and has unique setback requirements even though the Applicants can only access the Property from one of those roads. The Applicants seek to construct a reasonably sized deck addition and steps on the Property but are 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 Applicants to construct the deck addition and steps on the Property. 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 exceptional practical difficulty and unnecessary hardship was not created by the Applicants. The Applicants did not create the lot or enact the setback requirements which have limited the building envelope of the lot. The Applicants also did not construct the house or existing deck on the lot. Those structures were placed on the lot by a prior owner years ago. The unique characteristics of the Property are clear when reviewing the survey. The Board is convinced that the unnecessary exceptional practical difficulty was not created by the Applicants but was created the lot's unique characteristics.
- 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. There are other similar structures in the community and the proposed structures do not present visibility concerns along Coastal Highway as they will be a significant distance away from the edge of paving of the road. There are also trees between the structures and Coastal Highway so the addition and steps should not pose a visual threat to traffic along that road. Furthermore, no evidence was presented which would indicate that the variances would somehow alter the essential character of the neighborhood or be detrimental to the public welfare. The Board also notes that there is a gap between the edge of paving of Coastal Highway and the property line so the property appears larger than it actually is.
- 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 construct a deck addition and steps on the lot. The addition will allow for the placement of a hot tub and reasonable walking space around the hot tub. The steps are designed to minimize the encroachment into the setback area as well. Notably, the steps protrude a lesser distance into the setback area.
- 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. Jordan Warfel, and Mr. John Williamson. No Board Member voted against the motion to approve the 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 April 18, 2022