

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: DAVID J. BURKE

(Case No. 12740)

A hearing was held after due notice on September 19, 2022. The Board members present were: Dr. Kevin Carson, Mr. Jeffrey 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, side yard, and rear yard setback requirements for existing and proposed structures.

Findings of Fact

The Board found that the Applicant is requesting the following variances:

1. A variance of 5.1 feet from the 19.2 feet average front yard setback requirement for the proposed addition;
2. A variance of 5.5 feet from the 19.2 feet average front yard setback requirement for an existing deck;
3. A variance of 30 feet from the 30 feet front yard setback requirement for existing steps;
4. A variance of 27.1 feet from the 30 feet front yard setback requirement for an existing deck;
5. A variance of 2.8 feet from the 5 feet side yard setback requirement on the south side for an existing deck;
6. A variance of 2.2 feet from the 5 feet side yard setback requirement on the south side for an existing deck;
7. A variance of 2.4 feet from the 5 feet side yard setback requirement on the south side for an existing porch;
8. A variance of 3.1 feet from the 5 feet side yard setback requirement on the south side for an existing outdoor shower;
9. A variance of 3.7 feet from the 5 feet rear yard setback requirement for an existing deck and steps; and
10. A variance of 3.6 feet from the 5 feet rear yard setback requirement for an existing deck and steps.

This application pertains to certain real property located on the southeast side of South Bay Shore Drive within the Broadkill Beach Subdivision (911 Address: 1406 South Bay Shore Drive, Milton); said property being identified as Sussex County Tax Map Parcel Number 235-4.18-4.00 (hereinafter "the Property"). After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, drawings, an average setback survey plan dated March 28, 2022, a survey of the Property dated March 29, 2022, a site plan of the Property dated June 21, 2021, 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 no correspondence in support of or in opposition to the Application.
3. The Board found that Fred Bada was sworn in to give testimony about the Application.
4. The Board found that Mr. Bada testified that the house was built a number of years ago and the zoning regulations have changed since that time. He believes that the house was built in the 1960s or 1970s.

5. The Board found that Mr. Bada testified that the Applicants now work from home due to the Covid-19 pandemic and seek to enclose the existing deck and turn it into a home office.
6. The Board found that Mr. Bada testified that the Applicants purchased the home in 2005 and have not done any alterations to the home. He noted that the Applicants are looking to add onto the home but stay within the existing footprint and that, with the additions, they are looking to bring the home into compliance as a whole.
7. The Board found that Mr. Bada testified that the Applicants will be utilizing existing utilities on the Property.
8. The Board found that Mr. Bada testified that the home is partially on pilings and has to be elevated because the Property is in a VE flood zone.
9. The Board found that Mr. Bada testified that the Applicants face some structural issues because of design of the home. He noted that the house was pieced together over time by a prior owner.
10. The Board found that Mr. Bada testified that the Applicants talked about potentially building up but found that plan would create structural concerns and be a more costly option.
11. The Board found that Mr. Bada testified that the pilings go down two (2) side of the house but are the width of a trailer and the additional supports on the home are 4 foot by 4 foot posts.
12. The Board found that Mr. Bada testified that the steps off the front of the house extend to the property line and that the distance from the steps to the paving of the road is about another 12 feet. He believes that the steps can be positioned to land on the Property rather than at the front property line.
13. The Board found that Mr. Bada testified that the house is set back far enough to not create visibility issues along Bay Shore Drive.
14. The Board found that Mr. Bada testified that the area is very tight with the placement of structures.
15. The Board found that Mr. Bada testified that the Property is unique due to the nonconformity of the structure and the challenges that present from it.
16. The Board found that Mr. Bada testified that the average front yard setback for the Property is 19.2 feet.
17. The Board found that Mr. Bada testified that the existing deck is only about 8 feet wide and would give them about 5 or 6 feet to work with for the addition of their home office. He noted that, at that size, building code would not dictate it to be a room because 7 feet is the minimum size for a room.
18. The Board found that Mr. Bada testified that the Applicants cannot build on ground level due to the VE flood zone.
19. The Board found that Mr. Bada testified that he is not aware of any complaints about the steps.
20. The Board found that Mr. Bada testified that the garage is underneath of the house and consists of one (1) bay.
21. The Board found that Mr. Bada testified that there is one floor of living space in the dwelling and there is storage underneath the dwelling.
22. The Board found that no one appeared in support of or in opposition to the Application.
23. 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, with conditions, met the standards for granting a variance. The findings below further support the Board's decision to approve the Application with conditions.
 - a. The Property is unique as it is a lot developed by a house prior to the enactment of the Sussex County Zoning Code and is located in the VE flood zone. The house was placed on the lot by a prior owner and there have

been several additions made to the house over the years by prior owners. The Applicant, who has owned the Property since 2005, needs to make a reasonable addition to the house but has encountered difficulty due to structural concerns with the house, the flood zone requirements, and the small size of the lot. The Board notes that the Property is a small and narrow lot measuring only 50 feet wide and consisting of 5,000 square feet. These unique conditions greatly limit the buildable area of the lot and it is clear to the Board that the lot's unique characteristics have created an unnecessary hardship and exceptional practical difficulty for the Applicant who seeks to retain existing structures and to construct a small addition 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 a narrow lot and has a limited building envelope due to the development prior to the enactment of the Sussex County Zoning Code, the lot's size, and the flood zone requirements. The Applicant seeks to retain the existing structures and to add a small 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 Applicant to retain the existing structures and to add a small addition on the Property. The Board is convinced that the shape and location of the structures are also reasonable, which is confirmed when reviewing the survey provided by the Applicant.
- d. The exceptional practical difficulty and unnecessary hardship were not created by the Applicant. The Applicant did not create the lot or place the existing dwelling and the dwelling has unique structural issues due to its construction and additions by prior owners. The Applicant was also limited in where the addition could be located due to the flood zone requirements. Those conditions have limited the building envelope of the lot. The unique characteristics of the Property are clear when reviewing the survey. The Board is convinced that the unnecessary hardship and exceptional practical difficulty were not created by the Applicant but were created the lot's unique characteristics and the prior development thereof.
- 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 dwelling has been on the Property since the 1960s with no complaints noted in the record. The other structures have been in place since at least 2005 and no complaints were noted in the record about those structures either. The addition will remain within the footprint of the existing structures. 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.
- 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 construct a reasonably sized addition and to retain the existing structures on the lot. The Board notes that the Applicant was constrained by the unique conditions of the lot and house and has limited the size of the addition to minimize the variances requested.

- 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.
- h. The Board's approval was conditioned on the following:
 - i. The steps which project off the front of the house near Bay Shore Drive must be turned 90 degrees such that the terminus of the steps runs parallel to Bay Shore Drive. The Board notes that it has concerns that the current layout of those steps would require a user to exit and enter the steps off the front property line. By turning the steps as required by this condition, a user of the steps would enter and exit the steps and still remain on the Property. The Applicant's representative indicated that this option was feasible and the Board requires that the Applicant comply with the same as a condition of this approval.

The Board granted the variance application with conditions 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 with conditions. The Board Members in favor of the Motion to approve with conditions 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 variance application with conditions.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY



Jeffrey Chorman
Chair

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

Date November 21, 2022