

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

**IN RE: COLEMAN REVOCABLE TRUST**

**(Case No. 12407)**

A hearing was held after due notice on February 3, 2020. 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 side yard setback requirements for a proposed structure.

Findings of Fact

The Board found that the Applicant is requesting variances of 2 feet from the ten (10) feet side yard setback requirement on both sides of the proposed Lot 1 as shown on a variance plan dated January 29, 2020. This application pertains to certain real property located on the southeast corner of Jefferson Bridge Road and Coleman Gale Lane (911 Address: 39548 Jefferson Bridge Road, Bethany Beach) said property being identified as Sussex County Tax Map Parcel Number 1-34-17.11-29.00. After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a letter from Kenneth Christenbury, a subdivision plan, a partition plan of the Property dated October 29, 2019, a variance plan of the Property dated January 29, 2020, 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 Kenneth Christenbury, who represents the contract purchaser, was sworn in to testify about the Application.
4. The Board found that Mr. Christenbury testified that the Property was subdivided in 1968 but the lot line was reestablished by a plan recorded on January 12, 2019.
5. The Board found that Mr. Christenbury testified that, in 1968, lots were allowed to have a 5 foot side yard setback but that was later increased to 10 feet.
6. The Board found that Mr. Christenbury testified that the reestablishing of the lots did not bring back the 5 foot side yard setback.
7. The Board found that Mr. Christenbury testified that no variance is needed for proposed Lot 2 and that the variances are proposed for Lot 1.
8. The Board found that Mr. Christenbury testified that Lot 1 is narrow in width which does not meet the current building demand.
9. The Board found that Mr. Christenbury testified that most current zoning codes allow for a 40 foot wide building envelope but, when the original lot was created, it had a building envelope of 34 feet wide. Now with the change in setbacks, it has been reduced to 24 feet wide.
10. The Board found that Mr. Christenbury testified that the current building envelope is narrower than the other lots in the subdivision and a modern home cannot fit on the Property. He believes that a 24 wide building envelope is too small for a modern home.
11. The Board found that Mr. Christenbury testified that the proposed variances will allow for a house measuring 28 feet wide to be constructed thereon.
12. The Board found that Mr. Christenbury testified that the property encumbrances were created by the change in County Code regarding the setbacks and not by the Applicant.

13. The Board found that Mr. Christenbury testified that granting this variance will allow construction on this lot to be closer to the essential character of the other homes in the subdivision.
14. The Board found that Mr. Christenbury testified that the variances requested are the minimum variances necessary to afford relief.
15. The Board found that Mr. Christenbury testified that the lot consists of less than 10,000 square feet.
16. The Board found that Mr. Christenbury testified that an 8 foot side yard is needed to make the lot buildable.
17. The Board found that Mr. Christenbury testified that Lot 1 will be accessed from Jefferson Bridge Road but Lot 3 and ½ of Lot 4 will still use Coleman Gale Lane.
18. The Board found that Mr. Christenbury testified that there are small lots in the neighborhood.
19. The Board found that Mr. Christenbury testified that building plans for the home are not available at this time but the Applicant could provide them if needed.
20. The Board found that Mr. Christenbury testified that the house will be a high-end home.
21. The Board found that no one appeared in support of or in opposition to the Application.
22. The Board voted to leave the record open for the limited purpose of allowing the Applicant to submit building plans and to appear at the Board's meeting on March 16, 2020, to answer questions. The building plans were submitted but the Applicant did not appear at the Board's meeting. Regardless of the Applicant's absence, the Board had no questions and discussed and voted on the Application at that time.
23. 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 prove that the Property could not be reasonably developed in strict conformity with the Sussex County Zoning Code. The Applicant proposes to construct a high-end house on this lot and the dwelling will encroach into the side yard setback area on both sides of the lot. While the Applicant argued that it was constrained by the size and conditions of the lot, the Applicant chose to subdivide this lot. Furthermore, the lot is a rectangular shaped lot with no unique conditions which appear to limit its development. There is no well or septic in the building envelope and there is no topographical or other physical condition of the Property which limits the construction within the building envelope. Rather, the Applicant chose to build a home outside the building envelope. While the Applicant argued that the lot is too small to build a modern home, the Applicant did not provide substantial evidence that a smaller home could not be constructed on the site. The Board was simply not convinced that the Applicant could not otherwise develop the Property in compliance with the Code. Likewise, the Board was not convinced that the variances are necessary to enable reasonable use of the Property.
  - b. One of the requirements for an applicant to meet when seeking a variance is to demonstrate that the unnecessary hardship and exceptional practical difficulty are not being created by the provisions of the Sussex County Zoning Code. In this case, the Applicant argued that the Code was the reason for the need for the variance. The Applicant cited changes in the Code between after the Applicant consolidated the lot and before the Applicant re-subdivided the lot. Rather than prove that some unique condition existed on the Property, the Applicant argued that the changes in

the Code have created the exceptional practical difficulty. The Board finds that the Applicant has failed to meet this standard as well.

- c. The Board finds that the Applicant is creating his own exceptional practical difficulty by proposing to develop the Property with the dwelling which does not fit within the building envelope. The Applicant's decision to construct the new dwelling on this site is the reason for the need for variances 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 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 have the dwelling on the lot for purposes of convenience, profit, and / or caprice. 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 its own exceptional practical difficulty.
- d. The approval of these variances would also alter the essential character of the neighborhood. The Applicant has already re-subdivided two parcels from a larger lot and plans to develop those lots. For many years, there was only 1 house on the two lots. This prior development was part of the character of the neighborhood. The Applicant now proposes to develop those 2 lots separately; which is a change – albeit a legal one. The Applicant, however, has gone beyond a simple re-subdivision of the lot by now proposing to place a new house on the lot in the setback areas. Effectively, the Applicant will be overdeveloping a lot which was previously part of a separate lot. This overdevelopment affects the essential character of the neighborhood by changing the development of the lot from a larger lot with 1 home to 2 smaller lots; one of which will have a dwelling outside the building envelope on both sides of the lot.
- e. 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 variance necessary to afford relief. Furthermore, the Board finds that no variances are needed to afford relief since the Applicant failed to demonstrate that the Property could not otherwise be developed 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 Mr. Jeffrey Chorman, Ms. Ellen Magee, Mr. John Williamson, and Mr. Brent Workman. Dr. Kevin Carson voted against the Motion to deny 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 May 5, 2020.