

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

**IN RE: DAVID PREZIUSO & GLORIA PREZIUSO**

**(Case No. 12451)**

A hearing was held after due notice on July 20, 2020. The Board members present were: Dr. Kevin Carson, Ms. Ellen Magee, Mr. John Williamson and Mr. Brent Workman.

Nature of the Proceedings

This is an application for a variance from the corner front yard setback requirement for a proposed dwelling.

Findings of Fact

The Board found that the Applicants are seeking a variance of 1.36 feet from the fifteen (15) feet corner front setback requirement for a proposed dwelling. This application pertains to certain real property located on the northeast corner of Salty Way East and Salty Way Drive within the Keen-Wik West Subdivision (911 Address: N/A); said property being identified as Sussex County Tax Map Parcel Number 5-33-19.07-58.00. 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 survey of the Property dated March 18, 2020, 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 Bryan Elliott and David Preziuso were sworn in to give testimony about the Application.
4. The Board found that Mr. Elliott testified that the Property is unique as it is small and irregular in shape and the lot narrows to the front which reduces the building setback line.
5. The Board found that Mr. Elliott testified that the Property is on a corner lot and located adjacent to a canal.
6. The Board found that Mr. Elliott testified that the deed restrictions require a 20 foot rear yard setback from the canal.
7. The Board found that Mr. Elliott testified that the dwelling cannot be built without the variance and the variance is necessary for the reasonable use of the Property.
8. The Board found that Mr. Elliott testified that the homeowners association has given approval for the home to be built.
9. The Board found that Mr. Elliott testified that the dwelling is pushed back as far as possible to try to keep it within the building setback line.
10. The Board found that Mr. Elliott testified that the lot is serviced by public water and sewer.
11. The Board found that Mr. Elliott testified that the Applicants did not create the lot but are trying to work with the limitations due to the uniqueness of the property.
12. The Board found that Mr. Elliott testified that granting the variance will not alter the essential characteristics of the neighborhood but will improve it.
13. The Board found that Mr. Elliott testified that the variance will not be detrimental to the public welfare.
14. The Board found that Mr. Elliott testified that the variance requested is the minimum variance to afford relief.

15. The Board found that Mr. Elliott testified that there will be no steps or HVAC units in the setbacks.
16. The Board found that Mr. Elliott testified that the Applicants tried another home but it would not fit on the lot either.
17. The Board found that Mr. Elliott testified that the house will measure 2,600 square feet and will consist of 2 stories. According to Mr. Elliott, approximately 3 square feet of the house will encroach into the setback area.
18. The Board found that Mr. Elliott testified that there is approximately 10 feet from the edge of paving to the property line and there are no visibility issues with the intersection.
19. The Board found that Mr. Preziuso testified that he purchased the lot on December 3, 2019, and he thought the building envelope was larger. He believes that there is no possibility of developing the lot without the variance.
20. The Board found that no one appeared in support of or opposition to the Application.
21. 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 due to its size, shape, and deed restrictions. The lot is small as it consists of only 10,761 square feet. The lot is also subject to deed restrictions which limit the developable area of the rear of the lot and require that the house be built closer to the front property line. The front of the lot, however, is substantially narrower than the rear of the lot due to the angle of the corner front property line. As such, the lot has a unique shape which creates an odd and small building envelope. These conditions have created an unnecessary hardship and exceptional practical difficulty for the Applicants who seek to build a house on the Property as noted above.
  - 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 a proposed dwelling on the lot but are unable to do so while complying with the Sussex County Zoning Code. The Board is thus convinced that the variance is necessary to enable the reasonable use of the Property as the variance will allow the Applicants to construct a dwelling on the lot. The Board is convinced that the size, shape, and location of the house are reasonable. The Board also notes that the only a small portion of the house will encroach into the setback area.
  - 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 as they only recently acquired 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 they need the variance in order to reasonably develop the Property as proposed.
  - e. The variance 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 variance will have no effect on the character of the neighborhood. The variance will allow the Applicants to construct a

reasonably sized dwelling as proposed. No neighbors appeared in opposition to the request and only a small portion of the dwelling will encroach into the setback area. The Board also notes that there is a large gap between the edge of paving of the road and the corner front property line so the Property appears larger than it actually is. Lastly, the Board finds that no evidence was presented which demonstrate that the variance would somehow alter the essential character of the neighborhood or be detrimental to the public welfare.

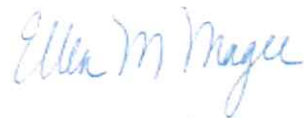
- f. The variance sought is the minimum variance necessary to afford relief and the variance requested represents the least modification possible of the regulation at issue. The Applicants have demonstrated that the variance sought will allow the Applicants to construct a dwelling on the Property. The Board finds that the Applicants took reasonable measures to otherwise limit encroachments into the setback area but were constrained by the Property's unique conditions and other regulations.
- 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, Ms. Ellen Magee, Mr. Brent Workman, and Mr. John Williamson. No Board Member voted against the motion to approve Application. Mr. Jeffrey Chorman did not participate in the discussion or vote on this 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 September 21, 2020