

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: SCOTT A. HUTTON & JOHN A. RANDOLPH

(Case No. 12460)

A hearing was held after due notice on August 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 a variance from the front yard setback requirement for proposed structures.

Findings of Fact

The Board found that the Applicants are requesting a variance of 1 foot from the five (5) foot average front yard setback requirement for a projecting bay window feature and a variance of 3.5 feet from five (5) foot average front yard setback requirement for proposed steps. This application pertains to certain real property located on the northeast side of Bay Front Road approximately 40 feet southeast of Monroe Avenue (911 Address: 502 Bay Front Road, Milton) said property being identified as Sussex County Tax Map Parcel Number: 2-35-4.17-28.00. After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, photographs, drawings and schematics, an aerial photograph of the Property, a survey of the Property dated October 25, 2019, 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 Scott Hutton was sworn in to testify about the Application.
4. The Board found that Mr. Hutton testified that he purchased the site in 2002 and removed the condemned structure existing on the site and, since that time, it has been maintained as a natural site.
5. The Board found that Mr. Hutton testified that, since 2002, the DNREC dune restriction line has since changed.
6. The Board found that Mr. Hutton testified that the lot consists of less than 10,000 square feet and the DNREC restriction line cuts across the site.
7. The Board found that Mr. Hutton testified that variances are being requested to build the proposed dwelling as the variances are for a bay window and steps associated with the dwelling.
8. The Board found that Mr. Hutton testified that the house to the northeast of the subject property is located 1 inch from the property line.
9. The Board found that Mr. Hutton testified that the proposed steps on the subject property would sit back farther from Bay Front Road than the house on the neighboring lot.
10. The Board found that Mr. Hutton testified that the house would meet the 5 foot front yard setback requirement but the steps and bay window that would encroach.
11. The Board found that Mr. Hutton testified that the house has been designed to be as narrow as possible to fit on the lot.
12. The Board found that Mr. Hutton testified that the lot is subject to FEMA regulations so the house will need to be elevated, thereby creating a need for the steps.
13. The Board found that Mr. Hutton testified that the Property is unique because the usable area has been reduced by 60% due to the dune restriction line.

14. The Board found that Mr. Hutton testified that the DNREC dune line is not new but the restrictions have been tightened such that the Applicants cannot build over the dune line as they could have done in 2002.
15. The Board found that Mr. Hutton testified that the Property cannot otherwise be developed as the design has been changed to meet the setbacks on the north and east side and to allow for the septic system on the south side.
16. The Board found that Mr. Hutton testified that the DNREC restriction line has reduced the buildable area on the Property.
17. The Board found that Mr. Hutton testified that the variances will not alter the character of the neighborhood.
18. The Board found that Mr. Hutton testified that the building has been designed with historical coastal buildings used as a design model for this dwelling and the dwelling will enhance the neighborhood.
19. The Board found that Mr. Hutton testified that the variances requested are the minimum variances to afford relief.
20. The Board found that Mr. Hutton testified that Bay Front Road essentially dead ends at the property.
21. The Board found that Mr. William Culver and Ms. Eve Reed were sworn in to give testimony in opposition to the Application. Both individuals own property nearby and expressed strong concerns about the ability of emergency vehicles to access their properties if the variances were granted.
22. The Board found that Ms. Reed testified that she constructed her house 4 years ago without the need for a variance.
23. The Board found that no one appeared in support of and two parties appeared by teleconference in opposition to the Application.
24. 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 Applicants failed to prove that the variances were necessary to reasonably use the Property or that the Property could not be developed in strict conformity with the Sussex County Zoning Code. While the Property is unique due to the DNREC dune line, the Applicants are also afforded a significant front yard setback reduction which reduces the front yard setback to the 5 foot minimum. Despite that significant reduction, the Applicants still failed to design a house with related structures that complies with the setback requirements. Notably, the house itself fits within the building envelope but the bay window and steps encroach into the extremely limited front yard setback area. These encroachments are significant because they result in structures being less than 5 feet from Bay Front Road at its approximate terminus. There is no apparent cul-de-sac or turn around area on Bay Front Road shown on the documents presented to the Board. The Board notes that the lot is currently vacant so the Applicants have a blank slate upon which to work and could have designed a home with related structures to fit within the building envelope. Rather, the Applicants propose to build a multiple level home on the lot with steps and a bay window that encroach into the front yard setback area. It appears that the Applicants focused on certain design elements to the home but the Applicants failed to demonstrate that there was no other way to reasonably develop the lot without a variance. The Board was not convinced that steps could not be relocated elsewhere on the lot in compliance with the Code or that the bay window was necessary to enable reasonable use of the lot. Perhaps the dwelling and related structures would not be in the exact location where the

Applicants want it to be located or have the Applicants' preferred design elements but the Property appears to have a large enough building envelope for the Applicants to construct a reasonably sized dwelling and related structures in compliance with the Sussex County Zoning Code. 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.

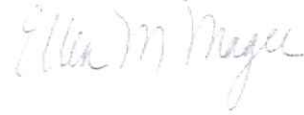
- b. The Board finds that the Applicants are creating their own exceptional practical difficulty by proposing to construct a dwelling with related structures which do not fit within the building envelope. The Applicants' decision to construct this dwelling and related structures in this location is the reason for the need for a variance and has nothing to do with the size, shape, or condition of the Property. As noted above, while the Property has unique conditions, the Applicants are also afforded the benefit of reduced setback requirements yet still do not comply with the Code. The building envelope, however, appears to otherwise be able to fit a dwelling with related structures 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 Applicants seek to build the dwelling and related structures as proposed for purposes of convenience, profit, and / or caprice. Since the Applicants can build a dwelling and related structures that can comply the Sussex County Zoning Code, the need for the variance is something created by the Applicants' wants rather than an unusual physical condition relating to the Property. The Applicants have thus created their own exceptional practical difficulty.
- c. The Board also finds that the location of the proposed steps and bay window in the front yard setback area would be detrimental to the public welfare. While other houses are located close to Bay Front Drive, the Property is located at or near the terminus of Bay Front Drive. The encroachment of these structures so close to Bay Front Drive present concerns about the ability of larger emergency vehicles to access the neighborhood or turn around if necessary. These encroachments would thus be detrimental to the public welfare.
- 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. Furthermore, the Board finds that no variance is needed to afford relief since there is space to build a reasonably sized dwelling with related structures 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, Ms. Ellen Magee, Mr. John Williamson, and Mr. Brent Workman. No Board Member 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 October 5, 2020.