

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

**IN RE:           ALBERT J. AND PATRICIA RIEDINGER           Case No. 10771 – 2011**

A hearing was held after due notice on April 4, 2011. The Board members present were: Mr. Dale Callaway, Mr. Ronald McCabe, Mr. John Mills, Mr. Brent Workman and Mr. Jeff Hudson.

Nature of the Proceedings

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

Finding of Facts

The Board found that the Applicants were seeking a variance from front yard setback requirements north of Maryland Avenue. The Applicants were requesting a 3.6' variance from the required 21.5' front yard (determined by average) setback for a balcony and deck. After a hearing, the Board made the following findings of fact:

1. The property is located along Maryland Avenue, in the unincorporated area north of Fenwick Island. The Applicants purchased the property in 1964, prior to the Zoning Ordinance, and the location of the house (built in the 1950's) became legally nonconforming when the Zoning Ordinance went into effect in 1970. At the time the house was actually located along the common boundary line with Dominic and Leslie Marra
2. In 2003, the Applicants decided to modernize the house raise it onto pilings consistent with flood insurance regulations. Because moving it would destroy the nonconforming status the Applicants applied to the Board for a 7' variance from the 10' side yard setback (on the Marra side). That would have left the house just 3' from the common boundary with the Marra's, and that was something to which they objected. The application also requested a 22' variance from the required 30' front yard setback. Based upon that hearing, and in particular the objections from the Marra's, the Board left the record open in order to allow for averaging of the front yard setback. That turned out to be 21.5'. With that information, the Board granted variances conditioned upon the house being centered on the lot, and which essentially allowed the Applicants to build to 21.5' in the front yard.
3. Significantly, when the Applicants moved the house, the front of the structure was set at 21.5 feet consistent with the front setback line as averaged. By doing so the Applicants left no room for steps to reach the dwelling. As they continued with construction, they built a small landing outside the front door (which was now 10-12 feet off the ground), and a set of steps to reach the ground, thereby encroaching into the already-reduced front setback.
4. The Applicants had the choice of moving the house again, or seeking further relief from the Board. They filed another application in 2006 for a variance that would allow them to preserve the landing and steps. At that hearing, the Board concluded that the owners' problems were self-created, since there was nothing that required them to set the house so far forward that the front wall was at the setback. Had they set the house further back, they could have built steps and

stayed within the front yard setback. There was also some discussion during that hearing about running steps from inside the first floor garage up to the living areas, since there appeared to be a good deal of open space on the ground floor.

5. The 2006 decision by the Board denying the requested variance was not appealed.
6. The Applicants, through counsel, then approached the Zoning staff with a request that Section 115-182(D) be interpreted so as to allow the steps to encroach an additional 5' into the already-reduced setback. The Director of Planning & Zoning, through its attorney, Vincent Robertson, Esquire, issued a ruling that because the Code section talks about being at the first floor level, a raised deck such as the one desired by the Applicant would not qualify. In addition, the Applicant argued that a 5' encroachment could extend from the point at which a previous variance had been granted, but the Director ruled against that interpretation as well, and noted that the additional 5' was only applicable from the original setback and not a reduced setback established by averaging. No appeal of those administrative rulings was taken.
7. The Applicants' 2009 application, and their presentation to the Board, failed to mention the prior rulings; however, Leslie Marra referred to them in opposing the application. Because the prior rulings became final without an administrative appeal to the Board of Adjustment, the Applicants are precluded from re-arguing those same issues.
8. The current application requests a 3.6' variance from the 21.5' average front yard setback, or a new front yard setback at roughly 18', in order to allow someone to exit the "front door" onto a deck.
9. The Board determined that the Applicants did not meet the standards for granting a variance. There is nothing unique about the property itself, as most of the lots on that street, and on other blocks, were laid out at 50'x100'. They are basically simple rectangles, with no unusual topographical conditions affecting them. The lot is not oddly shaped, nor are there any surface conditions affecting it.
10. In fact, the only unusual characteristic is the front setback, which, instead of the original 30 feet, has been reduced to 21.5' by averaging, thereby affording the Applicants more room in which to build.
11. Any difficulty experienced by the Applicants was self-created when the property owners set the house so as to leave insufficient room for steps after receiving a variance in 2003. The owners should have taken into account how they were going to access the front door when they set the house and raised it. They were clearly aware that the County had ordinances and setbacks which governed, but just failed to inquire or to take reasonable precautions. They admitted their error during the 2006 hearing, and that was one of the reasons that this Board denied that application. That decision was not appealed.
12. Although the relief being requested (in terms of a deck versus steps) may be different from the previous 2006 application, the reason the predicament exists is still the owners' own "unforced error".


13. The property can be developed and utilized in a reasonable way without a variance, as it was utilized as a beach cottage for the last 60 years. Although the appearance is somewhat awkward with a front door that cannot now be used, there is nothing preventing the Applicant from removing the door and installing a window, or making other cosmetic modifications to improve the appearance. In addition, as Mrs. Marra pointed out, a deck can be built on the rear of the dwelling.
14. Although the Applicants claimed that they are only requesting the minimum to afford relief, they have already taken advantage of front yard averaging, which reduced their front yard setback from 30' to 21.5' to begin with.
15. Mrs. Marra also testified that the variance would alter the character of the neighborhood. The Board agreed that another front yard variance would reduce the "average" for the street, and therefore new homes or renovations could continually move closer to the street, eventually eliminating setbacks altogether.
16. Although a 3.6' variance may not appear to be a significant variance, it is when considered against the background of this property and the already-reduced front yard setback.

The Board denied the requested variance.

Decision of the Board

Upon motion duly made and seconded, the application was denied. The Board members voting in favor of denial were: Mr. Callaway, Mr. Workman, and Mr. McCabe; voting against denial were: Mr. Mills and Mr. Hudson.

**BOARD OF ADJUSTMENT  
OF SUSSEX COUNTY**

  
Dale Callaway  
Chairman

Date May 9, 2011