

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: WOLFRAM H. ANDREWS AND ARLENE S. ANDREWS

(Case No. 11444)

A hearing was held after due notice on September 8, 2014. The Board members present were: Mr. Dale Callaway, Mr. Jeff Hudson, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for variances from the front yard and rear yard setback requirements.

Findings of Fact

The Board found that the Applicants were seeking a 0.1 feet variance from the five (5) feet front yard setback requirement for a proposed second floor deck and a variance of nine (9) feet from the twenty (20) feet rear yard setback requirement for a proposed set of stairs. The Applicants have requested that the aforementioned requested variances be granted as they pertain to certain real property located south of Route 54 (Lighthouse Road) and being east of Roosevelt Avenue 1,200 feet south of Lincoln Drive and being Lot 22 Block 7 within Cape Windsor Subdivision (911 Address: 38815 Roosevelt Avenue, Selbyville, Delaware); said property being identified as Sussex County Tax Map Parcel Number 5-33-20.18-13.00. After a hearing, the Board made the following findings of fact:

1. John Barwick and Wolfram Andrews were sworn in to testify on behalf of the Application.
2. The Board found that Mr. Barwick submitted pictures and three (3) letters of support for the Board to review.
3. The Board found that Mr. Barwick testified that the Property is located in the Cape Windsor development.
4. The Board found that Mr. Barwick testified that the Applicants seek to build a porch and intend to build a second floor deck.
5. The Board found that Mr. Barwick testified that the proposed deck will be the same distance from the front yard property line as the neighbor's deck.
6. The Board found that Mr. Barwick testified that the existing house is already a non-conforming structure.
7. The Board found that Mr. Barwick testified that the proposed spiral staircase in the rear yard will give access between the existing first and second floor decks.
8. The Board found that Mr. Andrews testified that he has no outside access from the first floor to the second floor deck and that the stairs will provide better access.
9. The Board found that Mr. Andrews testified that the Applicants have a large family and the proposed deck and stairs will better accommodate the family.
10. The Board found that Mr. Andrews testified that there is no elevator access from the ground level but there is access to all floors of the house.
11. The Board found that Mr. Andrews testified that the structures have not yet been built and that he could build the second floor deck in compliance with the Sussex County Zoning Code.
12. The Board found that Mr. Andrews testified that there are steps from the ground level to the front floor entrance but that the stairs will provide better access for his grandchildren to come in and out of the house.
13. The Board found that Mr. Andrews testified that the house is elevated three (3) feet.
14. The Board found that one (1) party appeared in support of the Application.
15. The Board found that no parties appeared in opposition to the Application.

16. The Board found that the Office of Planning and Zoning had received a petition with fourteen (14) signatures in opposition to the Application.
17. The Board tabled its decision on the Application until September 22, 2014.
18. On September 22, 2014, the Board discussed the Application.
19. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, the Board determined that the Application failed to meet the standards for granting a variance. The Applicants failed to convince the Board that the difficulty and need for the rear yard variance were not self-created. The second floor deck is accessible from the inside of the unit which has an elevator. The proposed spiral staircase, which has not yet been built, is thus unnecessary and the Applicants are creating their own exceptional practical difficulty. Likewise, the Applicants failed to convince the Board that they met the standards for granting the front yard variance. Mr. Andrews testified that he could build the second story deck in compliance with the Sussex County Zoning Code so the variance from the front yard setback is not necessary to enable reasonable use of the Property and any need for a variance from that setback requirement would be self-created since the deck has not yet been built.

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 Application was denied. The Board Members voting to deny the Application were Mr. Dale Callaway, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman. Mr. Jeff Hudson voted against the Motion to Deny the Application.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY


Dale Callaway
Chairman

Date November 18, 2014.