

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: STEPHANIE A. GINOS & MAUREEN L. GOLEY

(Case No. 11459)

A hearing was held after due notice on October 6, 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 setback requirement.

Findings of Fact

The Board found that the Applicants were seeking a variance of 4.5 feet from the thirty (30) feet front yard setback requirement for an existing dwelling, a variance of 17 feet from the thirty (30) feet front yard setback requirement for an existing set of steps, and a variance of 0.3 feet from the thirty (30) feet front yard setback requirement for an existing deck. This application pertains to certain real property located southeast of Mississippi Avenue, 502 feet southwest of Bay Shore Drive and being Lot 35 and ½ Lot 34 Block J Section One within North Shores-Broadkill Beach (911 Address: 113 Mississippi Avenue, Milton, DE); said property being identified as Sussex County Tax Map Parcel Number 2-35-3.16-24.00). After a hearing, the Board made the following findings of fact:

1. The Board found that the Office of Planning & Zoning received no correspondence regarding the Application.
2. Laurie Bronstein was sworn in to testify about the Application and William Schab, Esquire, appeared on behalf of the Applicants and submitted pictures of the Property to the Board.
3. The Board found that Mr. Schab stated that the Property is located in Broadkill Beach and that lots in Broadkill Beach are small.
4. The Board found that Mr. Schab stated that the Applicants purchased the Property in 2003 and that a survey was completed at that time but was never reviewed by the Office of Planning and Zoning.
5. The Board found that Mr. Schab stated that the dwelling was constructed too close to the front property line by a prior owner.
6. The Board found that Mr. Schab stated that the Applicants were not aware of any encroachments until a new survey in 2014 was reviewed by the Office of Planning and Zoning.
7. The Board found that Mr. Schab stated that the Applicants are selling the Property and that the sale is contingent on the Board's approval of the variance request.
8. The Board found that Mr. Schab stated that the deck was attached the house when the Applicants purchased the Property.
9. The Board found that Mr. Schab stated that the Applicants added the front steps to the dwelling but that, since the dwelling already encroached, there was no way to build the steps in conformity with the Sussex County Zoning Code.
10. The Board found that Ms. Bronstein testified that she is the Real Estate Broker and is familiar with the area.
11. The Board found that Ms. Bronstein testified that the requested variances will not have an adverse effect to the property values.
12. The Board found that Ms. Bronstein testified that there are no dwellings on either side of the Property and that the properties across the street are septic fields for dwellings on another street.

13. The Board found that Ms. Bronstein testified that Mississippi Avenue is a dead end road with limited access.
14. The Board found that Ms. Bronstein testified that the dwelling and deck were constructed in 1992 and that the deck was built by the prior owner.
15. The Board found that Ms. Bronstein testified that the front steps serve as access to the main entrance of the dwelling.
16. The Board found that Ms. Bronstein testified that the front steps enable reasonable use of the Property.
17. The Board found that Ms. Bronstein testified that the variances do not adversely affect the neighboring properties or their property values.
18. The Board found that Mr. Schab stated that the existence of the dwelling when the Applicants purchased the Property makes the Property unique.
19. The Board found that Mr. Schab stated that the existing dwelling and deck cannot be otherwise developed.
20. The Board found that Mr. Schab stated that the variances are necessary for the reasonable use of the Property.
21. The Board found that Mr. Schab stated that the difficulty was not created by the Applicants since the dwelling existed in its current location when they purchased the Property.
22. The Board found that Mr. Schab stated that the variances represent the least modification of the regulation at issue and that the variances are the minimum variances to afford relief.
23. The Board found that Mr. Schab stated that the steps are the only access to the dwelling.
24. The Board found that Ms. Bronstein testified that the dwelling is an elevated ranch house and the decks and steps provide the only access to the dwelling.
25. The Board found that Ms. Bronstein testified that the Applicants were unaware of the encroachments.
26. The Board found that Ms. Bronstein testified that the shed has been moved into compliance with the Sussex County Zoning Code.
27. The Board found that Ms. Bronstein testified that it is not clear if a building permit was obtained for the steps.
28. The Board found that Ms. Bronstein testified that she confirmed the statements made by Mr. Schab as true and correct.
29. The Board found that Ms. Bronstein testified that Mississippi Avenue is not a paved road and that the front yard appears larger because the actual road on Mississippi Avenue does not extend all the way to the Applicants' front yard property line.
30. The Board found that no parties appeared in support of or in opposition to the Application.
31. Based on the findings above and the testimony and exhibits presented at the public hearing and the public record, the Board determined that the application met the standards for granting a variance. The Property is unique in size as it is only 75 feet wide. The Property is also unique because it is located adjacent to an unpaved, dead end road. The variances are necessary to enable reasonable use of the Property. The variances will allow the existing dwelling, deck and stairs to remain in their current location. The decking and stairs are needed to allow reasonable access to the elevated dwelling. The hardship and exceptional practical difficulty were not created by the Applicants. The house and deck was placed on the Property by a prior owner and the stairs are needed for access to the house. The variances will not alter the essential character of the neighborhood. The structures have been in their current location for some time without complaint. The variances sought are the minimum variances necessary to afford relief. The variances represent the least modifications of the regulations at issue.

32. The Board conditioned its approval for the variance for the front steps on the Applicants obtaining a building permit for the steps.

The Board granted the variance application with conditions 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 with conditions. The Board Members in favor were Mr. Dale Callaway, Mr. Jeff Hudson, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman. No Board Members voted against the Motion to approve the variance application with conditions.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY



Dale Callaway
Chairman

If the use is not established within one (1) year from the date below the application becomes void.

Date December 2, 2014