

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: ROCCO ABESSINIO and MARY ABESSINIO

(Case No. 11495)

A hearing was held after due notice on December 15, 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 the side yard setback requirement.

Findings of Fact

The Board found that the Applicants were seeking a variance of 0.5 feet from the ten (10) feet side yard setback requirement for an existing dwelling, a variance of 6.7 feet from the ten (10) feet side yard setback requirement for existing steps and landing, and a variance of 3.5 feet from the ten (10) feet side yard setback requirement for an existing second level deck. This application pertains to certain real property located east of Route One (Coastal Highway) and being located at the southeast end of Heather Lane and being more specifically Lot 8 in Bethany Dunes Subdivision north of Bethany Beach (911 Address: 30980 Heather Lane, Bethany Beach, DE); said property being identified as Sussex County Tax Map Parcel Number 1-34-9.00-422.00. After a hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a portion of the tax map of the area, and a survey of the Property dated October 1, 2014.
2. The Board found that the Office of Planning and Zoning received no letters regarding the Application.
3. Rocco Abessinio was sworn in to testify the Application and James Fuqua, Esquire, presented the Application on behalf of the Applicants. Mr. Fuqua submitted exhibits to the Board to review which included copies of the survey, deed to the Property, building permit obtained by a prior owner, and an aerial photograph.
4. The Board found that Mr. Fuqua stated that the Property is located in the Bethany Dunes subdivision.
5. The Board found that Mr. Fuqua stated that the Applicants purchased the Property from a bank after a foreclosure in 1991.
6. The Board found that Mr. Fuqua stated that the Applicants are selling the Property and that a survey completed for settlement showed the existing encroachments.
7. The Board found that Mr. Fuqua stated that the Applicants have made no changes to the Property since purchasing it in 1991 and, thus, the Applicants did not create the encroachments.
8. The Board found that Mr. Fuqua stated that the building permit was issued to a prior owner in 1983 and that the Applicants believe that all structures were built in 1983.
9. The Board found that Mr. Fuqua stated that the encroachments were not discovered until the recent survey and that the Applicants were unaware of the encroachments until recently.
10. The Board found that Mr. Fuqua stated that the variances are necessary to enable reasonable use of the Property.
11. The Board found that Mr. Fuqua stated that the variances will not alter the essential character of the neighborhood and that the variances will allow the structures to remain in their current location.

12. The Board found that Mr. Fuqua stated that the variances requested are the minimum variances necessary to afford relief.
13. The Board found that Mr. Abessinio, under oath, confirmed the statements made by Mr. Fuqua.
14. The Board found that Mr. Lank advised the Board that the front yard of the Property is that portion of the lot along Heather Lane and that the portion of the lot that abuts to the adjacent Lot 9 is considered the side yard.
15. The Board found that no parties appeared in support of or in opposition to the Application.
16. 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 unusual size in comparison with other lots along Heather Lane and its access to Heather Lane. Heather Lane comes to a dead end on the northwest side of the Property. While the Property is larger than other nearby lots along Heather Lane, the access to Heather Lane from the Property is much different than other lots along Heather Lane and makes the Property unique. The Property is also unique due to its close proximity to the beach. The circumstances are also unique due to the fact that the Applicants purchased the Property from a bank after a foreclosure and did not construct the improvements.
 - b. The variances are necessary to enable reasonable use of the Property. The encroaching structures are reasonable structures and have been in their current locations since at least 1991 and probably since 1983. The variances will allow these structures to remain in those locations.
 - c. The exceptional practical difficulty was not created by the Applicants. The Applicants' deed to the Property evidences that the Applicants purchased the Property from a bank and the un rebutted testimony confirms that the bank acquired the Property after a foreclosure. The un rebutted testimony further evidences that the structures were in their current locations when the Applicants purchased the Property. It is clear that these encroachments were created by a prior owner and not by the Applicants.
 - d. The variances 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 structures have been in their current locations since at least 1991 and probably since 1983 and no evidence was presented that the structures have altered the character of the neighborhood or somehow been detrimental to the neighborhood. The approval of these variances allows the existing structures to remain in their locations.
 - e. The variances sought are the minimum variances necessary to afford relief and the variances requested represent the least modification possible of the regulations at issue. The Applicants have demonstrated that the variances requested will allow the existing structures to remain and that no additions which require a variance are being sought.

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 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.

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 February 18, 2015