

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: RICHARD M. MCQUAIL and ELIZABETH J. MCQUAIL

(Case No. 11526)

A hearing was held after due notice on February 16, 2015. The Board members present were: Mr. Dale Callaway, Mr. Jeff Hudson, Mr. John Mills, and Mr. Brent Workman.

Nature of the Proceedings

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

Findings of Fact

The Board found that the Applicants were seeking a variance of 1.3 feet from the thirty (30) feet front yard setback requirement for an existing dwelling and a variance of 0.2 feet from the ten (10) feet side yard setback requirement for an existing second story deck. This application pertains to certain real property located west of Route One (Coastal Highway) and east of Bayside Drive, approximately 267 feet north of Ocean Side Drive and being Lot 41 within Seatowne Subdivision (911 Address: 36805 Bayside Drive, Fenwick Island, DE); said property being identified as Sussex County Tax Map Parcel Number 1-34-22.00-80.00.

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 September 18, 2013.
2. The Board found that the Office of Planning & Zoning did not receive any correspondence regarding the Application.
3. Barry Godfrey was sworn in to testify about the Application and Chad Meredith, Esquire, presented the Application on behalf of the Applicant. Mr. Meredith submitted exhibits to the Board to review which included a copy of the survey dated May 6, 2002, and an aerial photograph of the Property.
4. The Board found that Mr. Meredith stated that the Applicants purchased the Property in 2013.
5. The Board found that Mr. Meredith stated that the Seatowne subdivision was recorded in 1980 and that the plots which created the Seatowne subdivision show the Property as being sixty (60) feet wide. Seatowne appears to be a fully developed subdivision.
6. The Board found that Mr. Meredith stated that the building permit for the dwelling was obtained in July 1981 and that the records suggest that the dwelling was built in 1981 and completed no later than 1982. The previous owners obtained numerous building permits throughout the years for sheds and minor improvements to the dwelling.
7. The Board found that Mr. Meredith stated that the 2002 survey shows the lot to be sixty (60) feet wide but the 2014 survey shows the lot to be 59.75 feet wide. The lot was originally recorded as a sixty (60) feet wide lot and, if the Property was sixty (60) feet wide, there would be no need for a side yard variance.
8. The Board found that Mr. Meredith stated that the difference in the surveys created the need for a variance.
9. The Board found that Mr. Meredith stated that the Property has unique circumstances and condition because the lot is smaller than originally believed.
10. The Board found that Mr. Meredith stated that there would be an exceptional practical difficulty to bring the Property into compliance. There would also be little to no benefit to neighboring properties if the dwelling and deck were moved

into compliance with the Sussex County Zoning Code. The deck is a second story deck

11. The Board found that Mr. Meredith stated that the variances are necessary to enable reasonable use of the Property.
12. The Board found that Mr. Meredith stated that the difficulty was not created by the Applicants.
13. The Board found that Mr. Meredith stated that the variances will not alter the essential character of the neighborhood. Other homes in the neighborhood appear to be similarly situated. The use does not impair the uses of adjacent and neighboring properties and the use is not detrimental to the public welfare.
14. The Board found that Mr. Meredith stated that the variances represent the least modifications of the regulations at issue and that the variances are the minimum variances necessary to afford relief.
15. The Board found that Mr. Godfrey testified that he has worked as a Real Estate Broker in Sussex County for twelve (12) years and that he is familiar with the Property and the surrounding areas. The variances will not affect adversely the values of the neighboring properties.
16. The Board found that Mr. Godfrey confirmed the statements made by Mr. Meredith as being true and correct.
17. The Board found that Fred Wetzelberger testified in opposition to the Application and raised concerns about the proposed variances.
18. The Board found that Mr. Wetzelberger testified that there were no complaints about the Property prior to the Application and that he is unaware of any previous complaint to the Association regarding the encroachments.
19. The Board found that Mr. Wetzelberger testified that neighboring homes are 3 stories tall and the dwelling on the Property is only 2 stories tall.
20. The Board found that Mr. Wetzelberger testified that it would cost the Applicants quite a bit of money to bring the front yard into compliance.
21. The Board found that no persons appeared in support of the Application.
22. The Board found that two (2) persons appeared in opposition to the Application.
23. 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 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 the fact that the Property is smaller than originally believed. The Property was designed to be sixty (60) feet wide but, a more recent survey has shown that the Property is narrower. The Property was developed many years ago by a prior owner and not by the current owners. This unique situation has created an exceptional practical difficulty for the Applicants.
 - b. Due to the unique situation, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property was developed by a previous owner under the belief that the Property was a certain size, only for a subsequent owner to learn many years later that the Property was smaller. The improvements were already built and now encroach into the setback areas. The reasonably sized 2 story dwelling and the deck are both reasonable uses of the Property. Testimony evidences that the dwelling is smaller than neighboring homes and that the deck is small as well. The Applicants seek to leave the existing improvements on the Property in their current locations but are unable to do so without violating the Sussex County Zoning Code. The Board is convinced that the variances are necessary to enable the reasonable use of the Property as the variances will allow the existing structures to remain on the Property. The survey attached to the Application confirms that the

improvements are reasonable in size, shape and location. The Board did not find persuasive the argument raised by the opposition that Applicants could easily bring the structures into compliance with the Code. Opposition has even testified that it would be expensive for the Applicants to bring the dwelling into compliance with the Code.

- c. The exceptional practical difficulty was not created by the Applicants. The Applicants only recently purchased the Property and the improvements have been on the Property for many years. The encroaching improvements were placed on the Property by a prior owner so the Applicant did not create the encroachments. Furthermore, the discrepancy as to the size of the Property has created a difficulty as well because the Property is smaller than once believed.
- 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 un rebutted evidence confirms that the structures have been in their present location for many years. The opposition claimed that the variances would somehow alter the essential character of the neighborhood but the opposition admitted that he was unaware of any complaints regarding these structures prior to the filing of this application. The Board did not agree with the opposition's argument that the variances would negatively impact sight line views since the structures have been in their locations for so long without complaint. Neighboring homes are also taller than Applicants' dwelling. Furthermore, the side yard variance, which was the variance most opposed by the opposition, is mere inches into the setback area and any effect on the neighborhood or neighboring properties is likely nil. Ultimately, the Board found that no credible or persuasive evidence was presented which would indicate that the improvements have somehow altered the essential character of the neighborhood or have been detrimental to the public welfare.
- e. The variances sought are the minimum variances necessary to afford relief and the variances requested represent the least modification possible of the regulation at issue. The Applicants have demonstrated the variances will allow the existing improvements to remain in their current locations and that no additional variance for an addition or expansion of those structures is 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, 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 April 7, 2015