

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: INDIAN RIVER WATER SPORTS CLUB

(Case No. 11530)

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 side yard setback requirement.

Findings of Fact

The Board found that the Applicant was seeking a variance of 1.9 feet from the five (5) feet from the side yard setback requirement for an existing shed, a variance of 0.4 feet from the five (5) feet side yard setback requirement for an existing shed, and a variance of 2.5 feet from the five (5) feet side yard setback requirement for an existing deck. This application pertains to certain real property located southeast of Road 312 (River Road) and being across from and halfway between Nanticoke Avenue and Cherokee Avenue in Riverdale (911 Address: 32374 River Road, Millsboro, DE); said property being identified as Sussex County Tax Map Parcel Number 2-34-34.12-43.00.

1. The Board was given copies of the Application, responses to the variance standards, correspondence from Cathy Burris, a portion of the tax map of the area, a survey of the Property dated December 23, 2014, a violation notice from Sussex County, correspondence from the Planning & Zoning Department, and assessment records.
2. The Board found that the Office of Planning & Zoning did not receive any correspondence regarding the Application.
3. Bob Craighton was sworn in to testify about the Application.
4. The Board found that Mr. Craighton testified that he represents the Indian River Water Sports Club.
5. The Board found that Mr. Craighton testified that the deck was built approximately six to eight years ago and that a recent survey showed the encroachments.
6. The Board found that Mr. Craighton testified that he believes that the shed which is 4.6 feet from the side property line can be moved into compliance but the shed closest to the building likely cannot be moved into compliance.
7. The Board found that Mr. Craighton testified that he needs more time to prepare his case.
8. The Board found that James Santangelo was sworn in and testified in opposition to the Application.
9. The Board found that Mr. Santangelo testified that owns the adjacent property and has lived there since 1999.
10. The Board found that Mr. Santangelo testified that his main concern is with the existing deck and its proximity to his lot and that the deck was built in 2007. The members and guests using the deck have jumped from the deck onto his property.
11. The Board found that Mr. Santangelo testified that the Applicant sometimes uses the Property for birthday parties and weddings.
12. The Board found that Mr. Santangelo testified that the existing bulkhead on his property has been accessed from the deck. Children have walked on the wall and played in his backyard and that he has caught children swinging on his swing set.

13. The Board found that Mr. Santangelo testified that the permit for the deck clearly states the setback requirements and that stakes are located on the Property so determining the property lines and setback areas should not be a problem. He believes that, if the deck complied with the setback requirement, it would be lessen the trespassing issues he experiences.
14. The Board found that Mr. Santangelo testified that he feels the Property can be developed in strict conformity with the Sussex County Zoning Code.
15. The Board found that Mr. Santangelo testified that he is selling his property and potential buyers have mentioned the close proximity of the Applicant's deck to his property.
16. The Board found that Mr. Santangelo testified that the difficulty has been created by the Applicant.
17. The Board found that Mr. Santangelo testified that the Applicant uses the Property for a clubhouse and there is no permanent resident.
18. The Board found that Mr. Santangelo submitted pictures for the Board to review.
19. The Board found that Mr. Craighton testified that the clubhouse is used for social gatherings and that he would be willing to bring the deck into compliance.
20. The Board found that no parties appeared in support of the Application.
21. The Board found that two (2) parties appeared in opposition to the Application.
22. The Board voted to leave the case open until March 2, 2015, to allow the Applicant more time to prepare its case.
23. On March 2, 2015, the Board held a public hearing on this Application. Board Member Norman Rickard advised the Board that he reviewed the file and listened to the previous hearing. The Applicant did not appear at the hearing.
24. 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 findings below further support the Board's decision to deny the Application.
 - a. The Board was not convinced that the Property was somehow unique or that that an exceptional practical difficulty exists.
 - b. The Property could be developed in strict conformity with the Sussex County Zoning Code. The Applicant testified that the deck and shed could be moved into compliance. Since those structures could be moved into compliance, there was no basis by which to find that the variances requested were necessary to enable reasonable use of the Property. The Board was also not convinced that the other shed located on the Property could not be moved into compliance with the Sussex County Zoning Code.
 - c. The exceptional practical difficulty was created by the Applicant. No evidence was presented that the structures were placed by someone other than the Applicant and the Applicant admitted that the deck and shed could be moved into compliance.
 - d. The deck has altered the essential character of the neighborhood and has substantially or permanently impaired the appropriate use or development of adjacent property, and is detrimental to the public welfare. The un rebutted testimony of James Santangelo confirms that individuals using the Applicant's deck have jumped onto his property due to its close proximity thereto. Mr. Santangelo has found children swinging on his swing set and other individuals trespassing onto his back yard without his permission. Mr. Santangelo is in the process of selling the Property and potential buyers have noted the close proximity of the deck to his property. The Board found Mr. Santangelo's testimony convincing and persuasive. It is clear to the Board that the Applicant has failed to demonstrate that the structures will not alter the essential character of the neighborhood and are not detrimental to the public welfare.

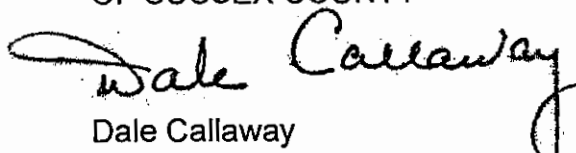
- e. The variances sought are not the minimum variances necessary to afford relief and they do not represent the least modifications possible of the regulations at issue. The Applicant has admitted that the shed and deck can be brought into compliance. If that is the case, then no variance is necessary thus this standard has not been met.
- f. The Board offered the Applicant an opportunity to return to the Board and present reasons how the Applicant met the standards for granting a variance because the Applicant had not convinced the Board that the standards for granting a variance had been met. The Applicant, however, failed to attend this meeting despite having been notified of the hearing. Applicant's failure to appear indicates to the Board that the Applicant is otherwise unable to demonstrate that the standards for granting a variance have been met.

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 variance application was denied. 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 deny the variance application.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY


Dale Callaway
Chairman

Date April 21, 2015