

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: MARY ELIZABETH BACEVICH

(Case No. 11565)

A hearing was held after due notice on May 4, 2015. 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 side yard setback requirements.

Findings of Fact

The Board found that the Applicant was seeking a variance of 5.2 feet from the ten (10) feet side yard setback requirement for an existing porch and a variance of 0.7 feet from the five (5) feet side yard setback requirement for an existing shed. This application pertains to certain real property located north of Route 54 (Lighthouse Road) and being northwest of Mallard Drive, approximately 232 feet northeast of Swann Drive and being more specifically Lot 74 Block G within Swann Keys Subdivision (911 Address: 36943 Mallard Drive, Selbyville); said property being identified as Sussex County Tax Map Parcel Number 5-33-12.16-72.00.

1. The Board was given copies of the Application, a portion of the tax map of the area, a survey dated February 20, 2015, a picture of the Property, and a portion of the Sussex County Zoning Code.
2. The Board found that the Office of Planning & Zoning did not receive any correspondence regarding the Application.
3. Thomas Carney was sworn in to testify about the Application. Raymond Tomasetti, Esquire, presented the case on behalf of the Applicants and submitted exhibits to the Board to review including pictures of the shed and porch, minutes of a variance approval from 2004, and deeds to the Property.
4. The Board found that Mr. Tomasetti stated that the Applicant believed that the neighbor's fence was located on the property line but the survey shows that it is not.
5. The Board found that Mr. Tomasetti stated that the previous owner was approved for a variance in 2004 for the existing porch. The previous owner placed the structures on the Property but was not aware of the encroachments.
6. The Board found that Mr. Tomasetti stated that a survey completed in 2015 showed the encroachments.
7. The Board found that Mr. Tomasetti stated that the Property is located in the Swann Keys development.
8. The Board found that Mr. Tomasetti stated that the small lot makes the Property unique.
9. The Board found that Mr. Tomasetti stated that the Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code.
10. The Board found that Mr. Tomasetti stated that the exceptional practical difficulty was not created by the Applicant.
11. The Board found that Mr. Tomasetti stated that the variances will enable reasonable use of the Property.
12. The Board found that Mr. Tomasetti stated that the variances will not alter the character of the neighborhood and the variances are not detrimental to the public welfare.

13. The Board found that Mr. Tomasetti stated that the variances are the minimum variances necessary to afford relief. The shed was moved to minimize the variance requests.
14. The Board found that Mr. Tomasetti stated that a significant portion of the rear yard is in the lagoon, which will not allow enough room for the shed.
15. The Board found that Mr. Tomasetti stated that the neighbor and previous owner believed the fence was located on the property line.
16. The Board found that Mr. Carney affirmed the statements made by Mr. Tomasetti.
17. The Board found that one (1) party appeared in support of the Application.
18. The Board found that no parties appeared in opposition to the Application.
19. 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 its small size. The Property is narrow and is located adjacent to a lagoon. A significant portion of the rear yard is even located in the lagoon. The unique characteristics of this Property limit the buildable area available to the Applicant and have created an exceptional practical difficulty for the Applicant. The uniqueness of the Property is evident when reviewing the survey submitted by the Applicant.
 - b. Due to the uniqueness of the lot, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Applicant seeks to retain a porch and shed of reasonable size but is unable to do so without violating the Sussex County Zoning Code. The small size of the lot and the existence of the lagoon in the rear yard greatly limit the building envelope from which the Applicant can place the porch and shed. The Board is convinced that the variances are necessary to enable the reasonable use of the Property as the variances will allow a reasonably sized porch and shed to remain on the Property. The Board is convinced that the shape and location of the porch and shed are also reasonable; which is confirmed when reviewing the survey.
 - c. The exceptional practical difficulty was not created by the Applicant. The Applicant did not create the unusual size of the Property. The limited building envelope of the Property has created the exceptional practical difficulty. The unique characteristics of the Property are clear when reviewing the survey. The prior owner placed the structures on the Property and it appears as though the prior owner relied on a neighbor's fence to ascertain the property line. The prior owner obtained a variance but built the structures slightly beyond the area approved by the prior variance. The prior owner mistook the fence line for the property line and relied on this mistake to his detriment. The Board is convinced that the exceptional practical difficulty was not created by the Applicant but was created by the size of the lot and the mistake of the prior owner.
 - 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 Board is convinced that the shed and porch will have no effect on the character of the neighborhood. The structures have been in their present location since 2004 and no evidence was presented which would indicate that the variances would somehow alter the essential character of the neighborhood or be detrimental to the public welfare. The structures are

consistent with structures typically found in a residential community such as Swann Keys.

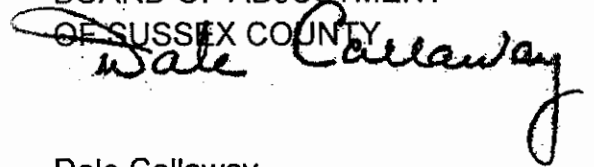
- e. The variances sought are the minimum variances necessary to afford relief and the variances requested represent the least modifications possible of the regulations at issue. The Applicant has demonstrated that the variances sought will allow the existing porch and shed to remain in their current locations and that no additional variances 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 June 9, 2015