

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: LINDA BAKOMENKO and RAY BAKOMENKO

(Case No. 11575)

A hearing was held after due notice on May 18, 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 and front yard setback requirements.

Findings of Fact

The Board found that the Applicants were seeking a variance of 1.1 feet from the five (5) feet side yard setback requirement for an existing deck and a variance of 2.7 feet from the thirty (30) feet front yard setback requirement for an existing detached garage. This application pertains to certain real property located west of Cedar Neck Road and being south of Piney Point Road Extended approximately 280 feet west of Piney Lane and being Lot 10 of the Norman N. Justice Subdivision (911 Address: 38225 Piney Point Road, Ocean View); said property being identified as Sussex County Tax Map Parcel Number 1-34-9.00-231.00.

1. The Board was given copies of the Application, a letter of no objection from Paul Cooper, Walter Cooper, and Deborah Scully, a portion of the tax map of the area, and a survey dated March 18, 2015.
2. The Board found that the Office of Planning & Zoning received two (2) letters in support of the Application and had not received any correspondence in opposition to the Application.
3. Jack Melvin, Linda Bakomenko, and Ray Bakomenko were sworn in to testify about the Application.
4. The Board found that Mr. Melvin testified that the Applicants inherited the Property three (3) years ago from Mrs. Bakomenko's father.
5. The Board found that Mr. Melvin testified that Mrs. Bakomenko's father purchased the Property and he later built a dwelling on the Property in the 1970s.
6. The Board found that Mr. Melvin testified that the Applicants are trying to sell the Property and a survey completed for settlement showed the encroachments. The Applicants will not be able to sell the Property without the variances.
7. The Board found that Mr. Melvin testified that the existing dwelling meets setback requirements but the existing steps on the deck encroach into the side yard setback requirement.
8. The Board found that Mr. Melvin testified that the adjacent property owner does not object to the requests.
9. The Board found that Mr. Melvin testified that the detached garage was also constructed in the 1970s.
10. The Board found that Mr. Melvin testified that the Property is very narrow which makes the Property unique.
11. The Board found that Mr. Melvin testified that the variances are necessary enable reasonable use of the Property.
12. The Board found that Mr. Melvin testified that the difficulty was not created by the Applicants.
13. The Board found that Mr. Melvin testified that the variances will not alter the character of the neighborhood since the improvements have been on the

Property for over thirty (30) years. Other properties in the neighborhood have similar structures located thereon.

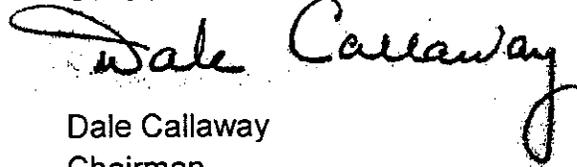
14. The Board found that Mr. Melvin testified that the dwelling complies with all setback requirements.
15. The Board found that Mr. Melvin testified that, according to the Assessment records, the prior owner obtained the necessary permits to construct the structures. The permits were issued in 1977 and 1979.
16. The Board found that one (1) party appeared in support of the Application.
17. The Board found that no parties appeared in opposition to the Application.
18. 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 narrowness which is apparent when reviewing the survey attached the Application. The uniqueness of the Property has created an exceptional practical difficulty for the Applicants who inherited the Property and only recently discovered that the steps to the existing deck and the detached garage violate the setback requirements.
 - b. Due to the uniqueness of the Property, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The existing steps and garage, as shown on the survey, are of a reasonable size and shape and have been located on the Property since the late 1970s. The Applicants seek the requested variances in order keep the structures on the Property. The Board is convinced that the variances are necessary to enable the reasonable use of the Property. The Board is convinced that the size, shape and location of the steps and garage are reasonable; which is confirmed when reviewing the survey.
 - c. The exceptional practical difficulty was not created by the Applicants. The Applicants did not create the unusual narrowness 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 obtained permits for those structures. The Board is convinced that the exceptional practical difficulty was not created by the Applicants but was created by the narrowness 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 steps and garage will not have a negative impact on the neighborhood. The structures have been in their present location since the late 1970s 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. Rather, the Applicants produced a letter of no opposition from neighbors.
 - 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 Applicants have demonstrated that the variances sought will allow the existing steps and garage 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 July 7, 2015