

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: MARY JEAN OWENS

(Case No. 11675)

A hearing was held after due notice on December 14, 2015. The Board members present were: Mr. Dale Callaway, Mr. John Mills, Mr. Jeff Hudson, Mr. Norman Rickard, 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 is seeking a variance of 6.5 feet from the ten (10) feet side yard setback requirement on the south side for a proposed deck and a variance of 1.5 feet from the five (5) feet side yard setback requirement on the south side for steps. This application pertains to certain real property located on the east side of East Lagoon Road approximately 780 feet north of Falling Point Road (911 Address: 30864 East Lagoon Road, Dagsboro); said property being identified as Sussex County Tax Map Parcel Number 1-34-6.00-143.01.

1. The Board was given copies of the Application, a portion of the tax map of the area, a letter from Bake Timmons, a letter from Patricia Hoban, and a survey of the Property dated September 4, 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. The Board found that Mary Jane Owens was sworn in to testify about the Application.
4. The Board found that Ms. Owens testified that the Property is narrow and that to build the deck in compliance with the setback requirement would only allow the deck to be 6.5 feet wide and a deck that narrow would not be comfortable.
5. The Board found that Ms. Owens testified that the proposed deck will measure 8 feet by 24 feet.
6. The Board found that Ms. Owens testified that she did not create the exceptional practical difficulty because she did not create the lot.
7. The Board found that Ms. Owens testified that the adjacent neighbor has no objection to the Application. The property owner also has no objection to the Application.
8. The Board found that Ms. Owens testified that the proposed deck and steps will enhance the Property and will not alter the essential character of the neighborhood. The proposed deck and steps will not impair the uses of neighboring and adjacent properties.
9. The Board found that Ms. Owens testified that the variances requested are the minimum variances to afford relief.
10. The Board found that Ms. Owens testified that the deck will remain uncovered and the proposed deck will provide enough space for patio furniture and for individuals to navigate safely around the deck.
11. The Board found that Ms. Owens testified that the existing trees on the south side lot will provide shade for the proposed deck. There is no shade on the north side of the lot.
12. The Board found that Ms. Owens testified that a septic system is located on the other side of the dwelling near the rear of her lot.

13. The Board found that Ms. Owens testified that there is an existing paved walkway on that side of the dwelling as well.
14. The Board found that Ms. Owens testified that there are five (5) septic systems to the rear of her property that service other lots in the park.
15. The Board found that Ms. Owens testified that she did not want the deck on the same side as the septic systems to maintain accessibility to the systems.
16. The Board found that Ms. Owens testified that the septic system is unusually large because it services multiple properties and occasionally odors come from the systems when there are issues.
17. The Board found that two (2) parties 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 because it is small and narrow. The Property is quite small and the building envelope is, thus, limited. The Property is also unique because the lot houses a septic system which services multiple nearby properties. The size of the septic system is larger than a normal septic system. The unique characteristics of this Property limit the buildable area available to the Applicant and have created an exceptional practical difficulty for the Applicant who seeks to construct a deck and steps on the lot.
 - b. Due to the uniqueness of the lot, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property has a unique size and the septic system situation is particularly unusual. The buildable area thereof is limited due to these conditions. The Applicant seeks to construct a deck and steps of a reasonable size but is unable to do so without violating the Sussex County Zoning Code. The Board notes that the deck, as proposed, is particularly narrow but still cannot comply with the Code requirements. The Applicant is unable to place the deck on the other side of the dwelling because the septic system is located on that side of the Property and the deck would limit access thereto. The proposed location of the deck also affords the Applicant with shade and distance from odors emanating from the septic system. 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 deck and steps to be constructed on the Property. The Board is convinced that the size, shape, and location of this deck and steps are reasonable, which is confirmed when reviewing the survey provided by the Applicant.
 - c. The exceptional practical difficulty was not created by the Applicant. The Applicant did not create the unusual size of the Property nor did the Applicant create the unusual septic system situation. The unique conditions of the Property have resulted in a limited building envelope on the Property and the small building envelope has created the exceptional practical difficulty. The unique characteristics of the Property are clear when reviewing the survey. The Board is convinced that the exceptional practical difficulty was not created by the Applicant but was created the lot's unique characteristics.
 - 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 deck and steps will have no effect on the

character of the neighborhood. The deck and steps are reasonable in size and the un rebutted testimony confirms that the neighbors have no objection to them. In fact, there are letters of support from neighbors in the record. Furthermore, 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.

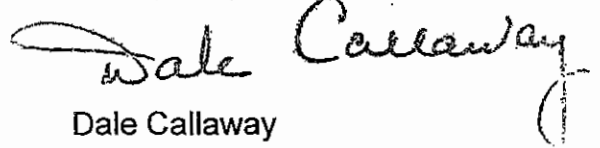
- e. The variances sought are the minimum variances necessary to afford relief and the variances requested represent the least modifications possible of the regulations at issue. The Applicant has demonstrated that the variances sought will allow the Applicant to construct a reasonably sized deck and steps on the Property.

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 member 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 January 26, 2016.