

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: MARC BASTOW & NANCY BASTOW

(Case No. 11735)

A hearing was held after due notice on March 21, 2016. 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 a variance from the rear yard setback requirement.

Findings of Fact

The Board found that the Applicants are seeking a variance of 3.5 feet from the ten (10) feet rear yard setback requirement and a variance of 2.8 feet from the ten (10) feet rear yard setback requirement for a proposed addition. This application pertains to certain real property located on south side of Bethany Loop approximately 200 feet west of Pond View Drive in the Salt Pond Subdivision (911 Address: 531 Bethany Loop, Bethany Beach); said property being identified as Sussex County Tax Map Parcel Number 1-34-13.00-1444.00.

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 November 3, 2015.
2. The Board found that the Office of Planning & Zoning received one (1) letter of support into the record and no correspondence in opposition to the Application.
3. The Board found that Marc Bastow and John Bruce Mears were sworn in to testify about the Application. James Fuqua, Esquire, appeared on behalf of the Applicants and submitted exhibits to the Board to review which included the survey of the Property, a photograph of the house, drawings of the elevation of the addition, and a copy of an approval letter from the Salt Pond Architectural Committee.
4. The Board found that Mr. Fuqua stated that the Applicants plan to enclose and extend an existing screen porch. The second floor addition will cantilever over the ground level porch.
5. The Board found that Mr. Fuqua stated that the existing porch measures 9 feet by 12 feet and the addition will extend an additional 3.5 feet.
6. The Board found that Mr. Fuqua stated that the Property is a large lot but a large portion of the front yard consists of Federal Non-Tidal Wetlands which cannot be encroached upon or disturbed. The existing dwelling had to be built to the rear of the Property due to the wetlands.
7. The Board found that Mr. Fuqua stated that the rear of the Property is adjacent to a small strip of common area owned by the homeowners association which separates the Property from the Salt Pond. The Applicants use this space as a portion of their backyard and the existing dock is owned by the Applicants.
8. The Board found that Mr. Fuqua stated that all the lots along the pond have the same open space. The owners of land adjacent to the strip of land between a residential lot and the Salt Pond have a license to use the strip of land.
9. The Board found that Mr. Fuqua stated that an addition cannot be constructed without a variance.
10. The Board found that Mr. Fuqua stated that the exceptional practical difficulty was not created by the Applicants.
11. The Board found that Mr. Fuqua stated that the variance will not alter the character of the neighborhood and the variance will not adversely affect the neighborhood.

12. The Board found that Mr. Fuqua stated that the addition will be 16 feet from the Salt Pond.
13. The Board found that Mr. Fuqua stated that the Salt Pond Architectural Committee approved the plan.
14. The Board found that Mr. Fuqua stated that the Property is unique due to the wetlands and the strip of land between the Property and the Salt Pond.
15. The Board found that Mr. Fuqua stated that the variance requested is the minimum variance to afford relief.
16. The Board found that Mr. Fuqua stated that the proposed addition will afford the Applicants with reasonable use of the space. The proposed room will be used as a nursery
17. The Board found that Mr. Bastow, under oath, affirmed the statements made by Mr. Fuqua. Mr. Bastow testified that he purchased the Property in 1999 with the existing improvements.
18. The Board found that Mr. Mears testified that the existing porch is so narrow that it is not usable and that the existing garage and driveway prevent the addition being built to the west of the house.
19. The Board found that one (1) party appeared in support of the Application.
20. The Board found that no parties appeared in opposition to the Application.
21. 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 a unique due to the non-tidal wetlands which occupy a significant portion of the front yard. The Property is also unique because it is separated from the nearby Salt Pond by a narrow strip of land in the rear yard which is used by the Applicants as a portion of the rear yard. From a practical standpoint, the rear yard of the Property is actually larger than it appears on the survey. These conditions are unique and have created an exceptional practical difficulty for the Applicants who seek to construct a reasonably sized addition on the Property.
 - b. Due to the uniqueness of the lot, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The unique wetlands in the front of the lot have created a limited building envelope for the Applicants to construct an addition. Despite the limited building area due to the wetlands, if the Property extended to Salt Pond, no variance would be necessary. The narrow strip of land between the rear property line and Salt Pond is maintained by the Applicants and used as part of their rear yard. Unfortunately for the Applicants, since the strip of land is owned by the homeowners association, the Applicants are unable to construct the proposed reasonably sized addition without violating the Sussex County Zoning Code. The current porch area is small and cannot be reasonably used – nor can it be relocated elsewhere on the lot. The variances are thus, necessary to enable reasonable use of the Property as the variance will allow a reasonably sized addition to be constructed on the Property. The Board is convinced that the shape and location of this addition are reasonable, which is confirmed when reviewing the survey provided by the Applicants.
 - c. The exceptional practical difficulty was not created by the Applicants. The Applicants did not create the wetlands or originally develop the lot and the surrounding area. The Board is convinced that the exceptional practical difficulty was not created by the Applicants but was created by 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 addition will have no effect on the character of the neighborhood. The addition will be located in the rear of the Property adjacent to common area and Salt Pond. The homeowners association has indicated its support for the proposed addition 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.
- e. The variances sought are the minimum variances necessary to afford relief and the variances requested represent the least modifications possible of the regulation at issue. The Applicants have demonstrated that the variances sought will allow the Applicants to construct a reasonably sized addition on the Property which can be reasonably used by the Applicants.

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 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 May 17, 2016