

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: PETER DAMIAN BRINGE & KIMBERLY ANN BRINGE

(Case No. 11737)

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 variances from the front yard and side yard setback requirements.

Findings of Fact

The Board found that the Applicants are seeking a variance of 4.4 feet from the thirty (30) feet front yard setback requirement for an existing pergola and a variance of 0.8 feet from the ten (10) feet side yard setback requirement on the north side for an existing deck and set of stairs. This application pertains to certain real property is located on the west side of Garfield Avenue approximately 1,225 feet southwest of Lighthouse Road (911 Address: 39180 Garfield Avenue, Selbyville); said property being identified as Sussex County Tax Map Parcel Number 5-33-20.18-184.01.

1. The Board was given copies of the Application, a portion of the tax map of the area, an undated survey of the Property, and a survey of the Property dated October 26, 2015.
2. The Board found that the Office of Planning & Zoning had not received any correspondence in support of or in opposition to the Application.
3. Peter Bringe and Kimberly Bringe were sworn in to testify about the Application. Raymond Tomasetti, Esquire, appeared on behalf of the Applicants and submitted pictures of the Property to the Board to review.
4. The Board found that Mr. Tomasetti stated that the Applicants purchased the Property in October 2015 and a survey completed for settlement showed the encroachments.
5. The Board found that Mr. Tomasetti stated that the previous owner built the dwelling in 2004. The pergola was also built by the previous owner.
6. The Board found that Mr. Tomasetti stated that the Property is irregularly shaped.
7. The Board found that Mr. Tomasetti stated that the deck is small and did not encroach in the first survey.
8. The Board found that Mr. Tomasetti stated that the Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code.
9. The Board found that Mr. Tomasetti stated that the variances do not alter the character of the neighborhood.
10. The Board found that Mr. Tomasetti stated that the difficulty was not created by the Applicants.
11. The Board found that Mr. Tomasetti stated that the use is not detrimental to the public welfare and the variances will not alter the character of the neighborhood.
12. The Board found that Mr. Tomasetti stated that the variances sought are the minimum variances to afford relief.
13. The Board found that Mrs. Bringe testified that the Property is located at the end of a dead end street which is pitch black with no street lights and the light attached to the pergola provides improved visibility. The pergola houses the wiring for the flood light and the light provides a buffer between her dwelling and traffic turning around in the street. The light also provides visibility of the entrance to the dwelling located on the side.

14. The Board found that Mrs. Bringe affirmed the statements made by Mr. Tomasetti.
15. The Board found that two (2) parties appeared in support of the Application.
16. The Board found that no parties appeared in opposition to the Application.
17. 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 as it is small and a portion of the rear yard is located in the Big Assawoman Bay. The lot is only 55 feet wide by approximately 95 feet deep. The usable portion of the rear yard is angled as well. The uniqueness of the Property limits the building envelope on the Property and has created an exceptional practical difficulty for the Applicants who seek to retain an existing deck, stairs, and pergola on the lot.
 - b. Due to the uniqueness of the lot and the situation, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property has a unique size and the buildable area thereof is limited due to its size. The difficulty associated with the size of the lot is exacerbated by the fact that a portion of the rear yard is located in the Big Assawoman Bay. The Applicants seek to retain an existing deck, stairs, and pergola but are unable to do so without violating the Sussex County Zoning Code. The Board is convinced that the variances are necessary to enable the reasonable use of the Property as the variances will allow the Applicants to retain the deck, stairs, and pergola on the lot. The Board notes that the deck and stairs are quite small and the pergola is needed to provide adequate lighting in the area. The Board is convinced that the size, shape, and location of these structures 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 unusual size of the Property. The unique lot size has resulted in a limited building envelope on the Property and the small building envelope has created an exceptional practical difficulty. The unique characteristics of the Property are clear when reviewing the survey. Furthermore, the deck, stairs, and pergola were placed on the Property by a prior owner and have been in their present location for many years. The Board is convinced that the exceptional practical difficulty was not created by the Applicants but was created the lot's unique characteristics and by the placement of the structures by a 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 structures will have no effect on the character of the neighborhood. The structures have been on the Property for many years and, despite the longstanding location of the structures, no complaints were noted in the record about their location. The Board notes that the pergola will also benefit the neighborhood by providing lighting in in an area that is quite dark, without street lighting, and potentially dangerous due to the lack of cul-de-sac. Ultimately, 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 Applicants have demonstrated that the variances sought will allow the Applicants to retain the deck, stairs, and pergola on the lot. No additions to those structures 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 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