

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: BILLIE MATSEN & PATRICK HANCOCK

(Case No. 11760)

A hearing was held after due notice on May 2, 2016. The Board members present were Mr. Dale Callaway, Mr. John Mills, Mr. Jeff Hudson, 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 0.1 feet from the ten (10) feet side yard setback requirement on the south side for an existing dwelling, a variance of 3.6 feet from the ten (10) feet side yard setback requirement on the south side for a proposed set of steps and landing, and a variance of 7.7 feet from the thirty (30) feet front yard setback requirement for a proposed set of steps and landing. This application pertains to certain real property is located on the northwest side of Madison Avenue approximately 573 feet south of Lighthouse Road (911 Address: 13404 Madison Avenue, Selbyville); said property being identified as Sussex County Tax Map Parcel Number 5-33-20.19-80.00.

1. The Board was given copies of the Application, pictures of the existing structure, portions of the elevation certificate, portions of the minutes of the Board of Adjustment meeting from November 19, 2001, a portion of the tax map of the area, and a survey of the Property dated March 16, 2015.
2. The Board found that the Office of Planning & Zoning received no correspondence in support of or in opposition to the Application.
3. The Board found that Patrick Hancock was sworn in to testify about the Application.
4. The Board found that Mr. Hancock testified that the Applicants purchased the Property in November 2010. A previous owner moved the dwelling to the Property and previous variances were granted by the Board for the rear and northeast side yard setback requirements in 2001 (identified as Case No. 7616).
5. The Board found that Mr. Hancock testified that the existing dwelling must be raised to eight (8) feet above grade to protect the dwelling from flooding. During Hurricane Sandy, water came to the front door of the dwelling and the Applicants have noticed standing water in the crawl space and mold related to the water. The raising of the dwelling will help alleviate those problems while lowering their flood insurance.
6. The Board found that Mr. Hancock testified that the footprint of the dwelling will remain the same.
7. The Board found that Mr. Hancock testified that the proposed set of steps and landing are needed to access the dwelling once it is raised. Raising the dwelling, however, will require more steps than is currently needed to access the dwelling.
8. The Board found that Mr. Hancock testified that the steps have been designed to limit encroachment into the front yard setback by having two (2) runs of steps rather than one (1) run of steps.
9. The Board found that Mr. Hancock testified that the variances are the minimum variances to afford relief.
10. The Board found that Mr. Hancock testified that the Applicants are unable to raise the dwelling without a variance and the Property cannot otherwise be

developed in strict conformity with the Sussex County Zoning Code. The proposed front steps and landing could not be built underneath the dwelling.

11. The Board found that Mr. Hancock testified that the variances will not alter the essential character of the neighborhood as there are other dwellings in the area that have been raised.
12. The Board found that Mr. Hancock testified that there will be no living space on the ground floor of the dwelling.
13. The Board found that no parties appeared in support of or in opposition to the Application.
14. 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 a small lot which suffers from occasional flooding. The uniqueness of the lot has created a small building envelope and a prior owner previously received variances for the dwelling located on the lot. The flooding problems, however, necessitate that the dwelling be raised and the steps needed to access the dwelling would encroach into the setback area. These conditions have created an exceptional practical difficulty for the Applicants who seek to raise the dwelling.
 - b. Due to the uniqueness of the lot, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property is quite small which creates a limited buildable area for the Applicants who seek to raise the existing dwelling to protect against flooding but are unable to do so without violating the Sussex County Zoning Code. The Board is convinced that the front yard variance for the steps and the side yard variance for the dwelling are necessary to enable the reasonable use of the Property as the variances will allow the dwelling to be raised to protect against flooding while providing needed access to the home. The Board notes that the Applicants did not construct the dwelling or place it on the lot and only seek permission to raise it. The ground floor of the dwelling will not be used for living space and the Applicants will not be able to construct steps underneath the house to access the living area. The Board is convinced that the size, shape, and location of the dwelling and steps 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 building envelope for the Property nor did they create the flooding problems. Additionally, the Applicants did not place the dwelling on the lot. Notably, a variance was granted to a prior owner for the dwelling – though the dwelling appears to have been placed approximately 0.1 feet further south than originally intended at that time. The Board is convinced that these factors have created the exceptional practical difficulty. The unique size of the Property is clear when reviewing the survey and the flooding problems are evidenced in the un rebutted testimony presented. The Board is convinced that the exceptional practical difficulty was not created by the Applicants 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 raising of the dwelling and the additional steps related to its elevation will have no effect on the character of the

neighborhood. No complaints were noted in the record about the location of the existing dwelling and the dwelling will be in the same location; only raised several feet. The Applicant also testified that there are other homes in the neighborhood which have been raised in a similar fashion. 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.

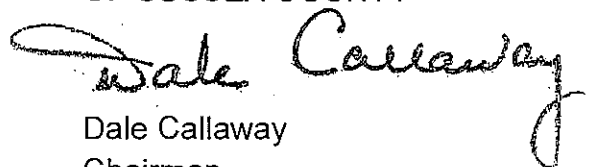
- e. The variances sought are the minimum variances necessary to afford relief and the variances requested represent the least modifications possible of the regulations at issue. The Applicants have demonstrated that the variances sought will allow the Applicants to elevate their reasonably sized dwelling and to construct the necessary steps to access the dwelling. These efforts will better protect the dwelling from flooding problems. The Board notes that the Applicants have designed the stairs in the front yard to minimize the encroachment into the front yard.
15. The variance application for the side yard setback on the south side of the Property for the steps and a landing was determined to not be necessary because the dwelling, though raised, will only have one floor of living space. The steps and landing on the south side of the Property are needed to access the first floor. As such, those steps may encroach into the side yard setback area by five (5) feet pursuant to the Sussex County Zoning Code. Since no variance is needed for those steps, that variance request is denied.

The Board granted the variance application in part and denied the variance application in part.

Decision of the Board

Upon motion duly made and seconded, the variance application was approved in part and denied in part. The Board Members in favor of the Motion were Mr. Dale Callaway, Mr. Jeff Hudson, Mr. John Mills, and Mr. Brent Workman. No Board Member voted against the Motion to approve the variance application in part and to deny the variance application in part. Mr. Norman Rickard was not present for the discussion or vote on this 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 21, 2016