

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: WAYNE JAMES BRZOSKA

(Case No. 11771)

A hearing was held after due notice on May 16, 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, side yard, and rear yard setback requirements.

Findings of Fact

The Board found that the Applicant is seeking a variance of 12.3 feet from the thirty (30) feet front yard setback requirement off of Basin Road to enclose an existing deck, a variance of 16.3 feet from the thirty (30) feet front yard setback requirement off of Basin Road for an existing set of steps, and a variance of 14.8 feet from the ten (10) feet side yard setback requirement on the north side for an existing dwelling. This application pertains to certain real property located on the northeast corner of Basin Street and Bald Eagle Road (911 Address: 37403 Basin Street, Rehoboth Beach); said property being identified as Sussex County Tax Map Parcel Number 3-34-19.16-18.01.

1. The Board was given copies of the Application, a portion of an undated survey, a construction drawing, an approval letter from the Sussex County Building Code Department dated May 19, 2015, a building permit dated May 19, 2015, and documents related to the issuance of the permit, a portion of an undated site plan, Findings of Fact for Case No. 5135-1993, a building permit application dated June 7, 1993, a Certificate of Compliance dated January 7, 1994, a portion of the tax map of the area, and an aerial photograph of the area.
2. The Board found that the Office of Planning and Zoning had not received any correspondence in support of or in opposition to the Application.
3. Wayne Brzoska was sworn in to testify about the Application and submitted two (2) letters from neighbors in support of the Application.
4. The Board found that Mr. Brzoska testified that the Property is a combined parcel of three (3) lots (Lots 67, 68 & 69) and the Property is pie-shaped and is unique.
5. The Board found that Mr. Brzoska testified that he seeks permission to build a screen porch on an existing deck and to add 2.7 feet to the east side of the deck.
6. The Board found that Mr. Brzoska testified that variances were approved by the Board in 1994 for the existing front deck and dwelling.
7. The Board found that Mr. Brzoska testified that he did not create the exceptional practical difficulty. The dwelling, garage, and deck were on the Property when he purchased the Property in 1993.
8. The Board found that Mr. Brzoska testified that the proposed screened in porch will not alter the essential character of the neighborhood and the porch will complement the Property.
9. The Board found that Mr. Brzoska testified that the porch will not block any neighbor's views or impair the uses of the neighboring and adjacent properties.
10. The Board found that Mr. Brzoska testified that the additional decking will create a cove along the driveway and block the view of trash receptacles from the front yard.
11. The Board found that Mr. Brzoska testified that the variances are the minimum variance to afford relief.

12. The Board found that Mr. Brzoska testified that he applied for a building permit, which was granted.
13. The Board found that Mr. Brzoska testified that he constructed the porch and he was unaware of the encroachment until final inspection on the screened in porch.
14. The Board found that Mr. Brzoska testified that there have been no changes to the Property other than the porch and the addition to the deck.
15. The Board found that Mr. Brzoska testified that his neighbor is in support of the Application.
16. The Board found that one (1) person appeared in support of the Application.
17. The Board found that no parties appeared in opposition to the Application.
18. The Board tabled the discussion and vote on this Application until June 6, 2016.
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. Variances were granted for the existing front deck and dwelling in 1994 but a recent survey shows that the dwelling is farther from the side yard on the north side than previously thought and that the deck is farther from the front yard along Basin Street than previously thought as well. The variances for the deck and dwelling are to update the previously granted variances to more accurately reflect their locations. The Applicant seeks to enclose a portion of the existing deck and to expand the existing deck. The deck will be expanded eastward within the side yard setback but the porch, while it will be on the same footprint of the existing deck, is a new construction and a variance is needed in order to construct the porch.
 - b. The Property is unique due to its unique size, shape, history, and proximity to two roads. The Property is has an odd angle along Bald Eagle Lane and is adjacent to both Basin Street and Bald Eagle Lane. These unique conditions have created a small and oddly shaped building envelope and have created an exceptional practical difficulty for the Applicant who seeks to retain an existing home and deck and to add a porch on the lot.
 - c. 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, shape, and conditions. The buildable area thereof is limited due to these conditions. The Applicant seeks to retain a dwelling and deck and to construct a porch of a reasonable size but is 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 a reasonably sized dwelling and deck to remain and for a porch to be constructed on the Property. The Board is convinced that the shape and location of these structures are also reasonable, which is confirmed when reviewing the survey provided by the Applicant.
 - d. The exceptional practical difficulty was not created by the Applicant. The Applicant did not create the unusual size or shape of the Property. These conditions were created prior to the Applicant's purchase of the Property. The unique lot size and shape has resulted in a limited building envelope on the Property and the difficulty resulting therefrom has been exacerbated by the frontages along two roads. Ultimately, 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.

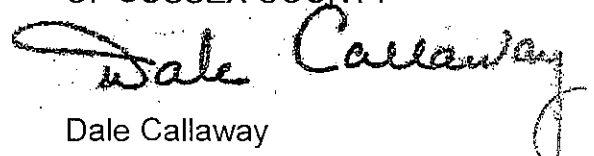
- e. The variances will not alter the essential character of the neighborhood nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare. The Board is convinced that the dwelling, porch, and deck will have no effect on the character of the neighborhood. The dwelling and deck have been on the Property since 1994 and the porch will be constructed on the same footprint as a portion of the deck. The deck will be expanded to the east but within the side yard setback area. Despite the longstanding locations of the dwelling and deck, no complaints were noted in the record about the locations of the structures. 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.
- f. 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 retain a reasonably sized dwelling and deck on the Property and to construct a porch and expand the deck.

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 August 2, 2016