

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: JULIE SARAGOSA & CLAUDE SARAGOSA

(Case No. 11784)

A hearing was held after due notice on June 6, 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 side yard setback requirement.

Findings of Fact

The Board found that the Applicants are seeking a variance of 3.71 feet from the ten (10) feet side yard setback requirement for a proposed dwelling. This application pertains to certain real property located on the west side of Boat Dock Circle East approximately 170 feet north of Woodland Circle (911 Address: None Available); said property being identified as Sussex County Tax Map Parcel Number 2-34-11.20-268.01.

1. The Board was given copies of the Application, a site plan of the proposed dwelling dated March 4, 2016, an aerial photograph of the Property, a letter to the Angola by the Bay Zoning Committee, and a portion of the tax map.
2. The Board found that the Office of Planning & Zoning received one (1) letter in support of the Application and no correspondence in opposition to the Application.
3. The Board found that Julie Saragosa and Claude Saragosa were sworn in to testify about the Application.
4. The Board found that Mrs. Saragosa testified that the Property is located in Angola by the Bay and the Applicants purchased the Property in 2009.
5. The Board found that Mrs. Saragosa testified that the Property is oddly shaped and is unique. The Property is particularly narrow in the rear.
6. The Board found that Mrs. Saragosa testified that the Applicants have searched numerous house plans to fit on this lot and to accommodate their family.
7. The Board found that Mrs. Saragosa testified that the proposed dwelling allows for the minimum variance to afford relief.
8. The Board found that Mrs. Saragosa testified that, without a variance, the Property cannot be built in strict conformity with the Sussex County Zoning Code.
9. The Board found that Mrs. Saragosa testified that the irregular shaped lot was not created by the Applicants.
10. The Board found that Mrs. Saragosa testified that the variance will not alter the essential character of the neighborhood. Rather, the dwelling will be an attractive, two (2) story house which will benefit the neighborhood.
11. The Board found that Mrs. Saragosa testified that the Applicants tried to sell the Property but, due to the irregular shape, it could not be sold.
12. The Board found that Mrs. Saragosa testified that the rear of the Property is adjacent to a common area and the adjacent lot has not yet been developed.
13. The Board found that Mrs. Saragosa testified that the proposed outdoor space is crucial to their family's needs and the screened porch is necessary.
14. The Board found that Mr. Saragosa testified that the Applicants have looked at many plans but could not find one that fit on the Property and only a small portion of the proposed dwelling will encroach into the setback area. A standard sized ranch dwelling would not even fit on this lot.
15. The Board found that Lawrence Folly was sworn in and testified in support of the Application.

16. The Board found that Mr. Folly testified that he lives in Angola by the Bay and that the Homeowners Association has approved the proposed dwelling. The entire subdivision consists of irregular shaped lots and that a large number of variances for side yards and rear yards have been granted over the years due to the irregularly shaped lots.
17. The Board found that no parties appeared in support of or in opposition to the Application.
18. 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 clearly unique as it is a small lot with an odd shape. The rear of the Property is particularly narrow and oddly shaped. The irregular shape and small size of the Property have created an exceptional practical difficulty for the Applicants as these unique physical conditions have created an unusual and limited building envelope.
 - b. Due to the uniqueness of the Property, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property is quite oddly shaped and the Applicants have researched potential housing plans for years but have only recently found a plan for the proposed dwelling which will have a minimal encroachment into the setback area. Unfortunately, the Applicants are unable to construct this reasonably sized dwelling on the Property without violating the Sussex County Zoning Code. The Board is convinced that the variance is necessary to enable the reasonable use of the Property as the variance will allow the dwelling to be constructed on the Property. The Board is convinced that the shape and location of this dwelling are also reasonable, which is confirmed when reviewing the site plan provided by the Applicants. If the Property was not so narrow in the rear yard, no variance would likely be needed for this proposed dwelling. Importantly, the Board notes that the Applicants sought other plans and even marketed the Property for sale but could not find a housing plan to fit on the Property or a buyer to purchase it due to the lot's unique physical conditions.
 - c. The exceptional practical difficulty was not created by the Applicants. The Property was created prior to the Applicants' purchase thereof and is an undersized lot with an unusual shape. The Board notes that the rear yard is particularly narrow which greatly limits the building envelope of the lot. These unique physical conditions have resulted in a limited building envelope and have created the exceptional practical difficulty for the Applicants who seek to construct a reasonably sized house.
 - d. The variance 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 Property is adjacent to common area and a vacant lot and there was no evidence presented indicating that the house would impact those lots. Rather, the homeowners association supports the request. A neighbor testified that the lot is unusually shaped and that other lots in the neighborhood have similar problems with development due to the odd shapes of some of the lots. It is clear to the Board that the variance is quite acceptable to the neighborhood and that the dwelling will fit with the character of the neighborhood. Furthermore, no evidence was presented which would indicate that the variance would somehow alter the essential character of the neighborhood or be detrimental to the public welfare.

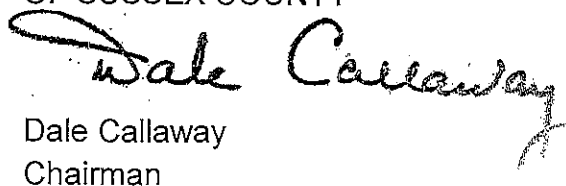
- e. The variance sought is the minimum variance necessary to afford relief and the variance requested represents the least modification possible of the regulation at issue. The Applicants have demonstrated that the variance sought will allow the Applicants to construct a reasonably sized dwelling on the Property. The Applicants sought other housing plans and chose the proposed plan as a means to minimize the need for a variance.

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 August 2, 2016.