

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: ROD CARSON & BETH CARSON

(Case No. 11798)

A hearing was held after due notice on July 11, 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 Applicants are seeking a variance of 7.3 feet from the thirty (30) feet front yard setback requirement to extend a porch, a variance of 7.5 feet from the thirty (30) feet front yard setback requirement to extend a porch, a variance of 1.7 feet from the five (5) feet side yard setback requirement for an existing shed, a variance of 1.9 feet from the five (5) feet side yard setback requirement for an existing shed, a variance of 0.9 feet from the five (5) feet rear yard setback requirement for an existing shed, and a variance of one (1) foot from the five (5) feet rear yard setback requirement for an existing shed. This application pertains to certain real property located on the southwest side of Lagoon Lane approximately 302 feet south of Bay Haven Street. (911 Address: 37740 Lagoon Lane, Ocean View); said property being identified as Sussex County Tax Map Parcel Number 1-34-8.00-133.00.

1. The Board was given copies of the Application, a portion of the tax map of the area, and an undated survey of the Property.
2. The Board found that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application.
3. The Board found that Mark Redden was sworn in to testify about the Application.
4. The Board found that Mr. Redden testified that the existing dwelling is very old and likely was constructed in the 1950s or 1960s.
5. The Board found that Mr. Redden testified that the dwelling was constructed in the flood zone and needs to be raised eight (8) feet due to flooding issues.
6. The Board found that Mr. Redden testified that a previous storm had caused flood damage to the existing dwelling.
7. The Board found that Mr. Redden testified that the rear yard extends into the lagoon.
8. The Board found that Mr. Redden testified that the Applicants have suffered damage from two (2) storms in the last ten (10) years.
9. The Board found that Mr. Redden testified that the carport and sheds encroach into the setback areas. The carport will be removed and the sheds will be moved into compliance with the Code.
10. The Board found that Mr. Redden testified that the carport is unattractive and its removal will improve the aesthetics of the neighborhood.
11. The Board found that Mr. Redden testified that storage will be located under the dwelling once it is raised.
12. The Board found that Mr. Redden testified that the Applicants purchased the Property as it exists.
13. The Board found that Mr. Redden testified that the variances do not alter the character of the neighborhood.
14. The Board found that Mr. Redden testified that the property values in the neighborhood should increase due to these improvements.

15. The Board found that Mr. Redden testified that the variances are the minimum variances to afford relief.
16. The Board found that Mr. Redden testified that raising the dwelling is more economical than building a new dwelling.
17. The Board found that Mr. Redden testified that new stairs are needed to access the front porch once the house is raised.
18. The Board found that Mr. Redden testified that the lagoon and flooding make the Property unique.
19. The Board found that Mr. Redden testified that the Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code.
20. The Board found that Mr. Redden testified that the difficulty was not created by the Applicants.
21. The Board found that Mr. Redden testified that the majority of neighbors are vacationers and the Applicants know of no complaints.
22. The Board found that no parties appeared in support of or in opposition to the Application.
23. 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 for the variances for the dwelling and porch 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 suffers from flooding problems. The dwelling has been damaged twice in a decade due to storms and the and the dwelling needs to be raised to alleviate the problems associated with the flooding. The flooding problems combined with the small shape of the lot have created a limited building envelope on the Property. Consequently, the Applicants are unable to raise the dwelling and provide adequate access thereto without violating the Sussex County Zoning Code. It is clear to the Board that the lot's unique characteristics have created this exceptional practical difficulty for the Applicants. The Board also notes that the dwelling appears to pre-date the enactment of the Sussex County Zoning Code.
 - 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 bordered by water and has a small shape. The proximity to the water leaves the Property subject to flooding problems and the existing dwelling needs to be raised out of the flood plain. The Applicants seek to raise the dwelling and porch and to construct stairs and a landing to provide safe access to the home but are unable to do so 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 Applicants to make these improvements 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 Applicants.
 - c. The exceptional practical difficulty was not created by the Applicants. The Applicants did not create the size and shape of the lot or cause the flooding problems on the lot; all of which limit the building envelope on the Property. 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 Applicants but was created the lot's unique characteristics. The Applicants also did not place the dwelling on the lot as it was placed on the lot many years ago 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 raising of the dwelling and porch and the construction of stairs and a landing will have no effect on the character of the neighborhood. The existing dwelling has been on the Property for many years without a complaint noted in the record. 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.

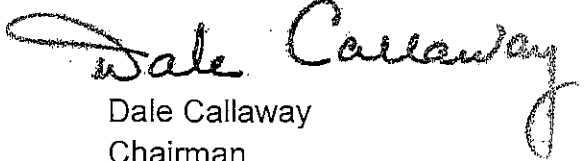
- e. The variances sought are the minimum variances necessary to afford relief and the variances requested represent the least modifications possible of the regulations at issue. The Applicants have demonstrated that the variances sought will allow the Applicants to raise the existing dwelling and porch while providing safe access to the Property. The Board is convinced that the Applicants have taken appropriate measures to limit the intrusion of these structures into the setback areas.
24. The Board denied the variances from the side yard and rear yard setback requirements requested for the shed because the shed can be moved into compliance with the Sussex County Zoning Code and the variances are, thus, not needed to enable reasonable use of the Property. The variances for the shed are also not the minimum variances to afford relief since shed can be moved into compliance by the Applicants.

The Board granted the variance application for the dwelling and porch finding that it met the standards for granting a variance and denied the variance application for the shed finding that it failed to meet the standards for granting a variance.

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, Mr. Norman Rickard, and Mr. Brent Workman. No Board Members voted against the Motion to approve in part and to deny in part 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 September 13, 2016.