

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: THOMAS J. FLYNN

(Case No. 11840)

A hearing was held after due notice on September 19, 2016. The Board members present were: Mr. Dale Callaway, Mr. John Mills, Mr. Jeff Hudson, Mr. Norman Rickard, Mr. Brent Workman.

Nature of the Proceedings

This is an application for variances from the side yard and rear yard setback requirements.

Findings of Fact

The Board found that the Applicant is seeking a variance of 10 feet from the twenty (20) feet rear yard setback requirement for an existing dwelling, a variance of 0.8 feet from the ten (10) feet side yard setback requirement on the west side for an existing dwelling, a variance of 9.6 feet from the ten (10) feet side yard setback requirement on the east side for an existing deck, and a variance of 6.9 feet from the ten (10) feet side yard setback requirement on the east side for an existing ramp. This application pertains to certain real property located on west side of Boat Dock Drive East approximately 1,253 feet west of Woodland Circle in Angola by the Bay Subdivision (911 Address: 23423 Boat Dock Drive East, Lewes); said property being identified as Sussex County Tax Map Parcel Number 2-34-17.08-71.00.

1. The Board was given copies of the Application, a portion of the tax map of the area, an aerial photograph of the Property, pictures of the Property, a survey of the Property dated March 21, 1983, and an undated survey of the Property.
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 Cindy Baker was sworn in to testify about the Application. William Schab, Esquire, presented the case on behalf of the Applicant.
4. The Board found that Mr. Schab stated that the Property is located in Angola by the Bay. The lot was originally created in 1973 and developed at that time.
5. The Board found that Mr. Schab stated that the Applicant purchased the two (2) contiguous parcels from Joseph Kurilla in 2004.
6. The Board found that Mr. Schab stated that Lots 27 and 28 were sold to the Melsons in 1973 and they built a dwelling on Lot 28 but the dwelling was partially on Lot 27. In 1983, the common boundary line between lots was reconfigured so that the dwelling was only on Lot 28.
7. The Board found that Mr. Schab stated that the 1983 survey shows the encroachments in the rear yard and west side yard setback areas but the encroachments were not noticed at that time. A deck was thereafter added to the dwelling.
8. The Board found that Mr. Schab stated that the deck and ramp on the east side of the dwelling are used as the main entrance to the dwelling. The ramp and deck have been on the Property almost as long as the dwelling. The Applicant removed a portion of the existing deck and ramp on Lot 28.
9. The Board found that Mr. Schab stated that, in 2006, the Applicant built a dwelling on Lot 27.
10. The Board found that Mr. Schab stated that the Property is unique as it is small and irregularly shaped.
11. The Board found that Mr. Schab stated that the Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code.

12. The Board found that Mr. Schab stated that the variances will not alter the essential character of the neighborhood.
13. The Board found that Mr. Schab stated that there have been no complaints about the location of the structures.
14. The Board found that Mr. Schab stated that the Applicant sold Lot 27 and the purchaser did not object to the location of the deck and ramp on the east side of Lot 28.
15. The Board found that Mr. Schab stated that the variances are the minimum to afford relief.
16. The Board found that Mr. Schab stated that Ms. Baker sells real estate in Angola by the Bay and knows the Property very well.
17. The Board found that Ms. Baker, under oath, affirmed the statements made by Mr. Schab.
18. The Board found that Ms. Baker testified that she believes the deck and ramp have been on the Property for over thirty (30) years based on the type of sliding doors used to access the deck and ramp from the house.
19. The Board found that Ms. Baker testified that the Applicant could not bring the structures into compliance without greatly affecting the value of the Property.
20. The Board found that Ms. Baker testified that the deck is the main entrance to the home and that removing the deck would adversely affect the dwelling.
21. The Board found that Ms. Baker testified that the deck also provides views of the water.
22. The Board found that Ms. Baker testified that the entrance on the west side of the dwelling provides access to a bedroom. It is not the main entrance to the house.
23. The Board found that Ms. Baker testified that she believes that the ramp was added by a prior owner who was handicapped and purchased the Property in 1984.
24. The Board found that Paul LeClere was sworn in and testified that he owns property nearby and that the ramp has been on the Applicant's property since he has lived there. Mr. LeClere neither supported or opposed the Application.
25. The Board found that no parties appeared in support of or in opposition to the Application.
26. 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 due to its unique size and shape. The Property is quite small and is located adjacent to a common area owned by the Angola by the Bay Homeowners Association as shown on the survey and aerial photographs. The unique characteristics of this Property limit the buildable area available to the Applicant and have created an exceptional practical difficulty for the Applicant who seek to retain a home, deck and ramp on the lot.
 - b. 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 and shape and the buildable area thereof is limited due to its size and shape. The Applicant seeks to retain a dwelling, deck, and ramp of 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, deck, and ramp to remain on the Property. The Board is convinced that the shape and location of the dwelling, ramp, and deck are also reasonable, which is confirmed when reviewing the survey provided by the Applicant.


- c. The exceptional practical difficulty was not created by the Applicant. The Applicant did not create the unusual size and shape of the Property. It is clear from the record that the lot was developed many years prior to the Applicant's purchase thereof. The unique lot size and shape have resulted in a limited building envelope on the Property and the small building envelope has created the exceptional practical difficulty. The unique characteristics of the Property are clear when reviewing the survey. Additionally, the Applicant did not place the structures on the Property. Those structures were placed on the Property by prior owners. The Board is convinced that the exceptional practical difficulty was not created by the Applicant but was created the lot's unique characteristics and by the placement of the structures in the setback areas by prior owners.
- 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 dwelling, deck, and ramp will have no effect on the character of the neighborhood. The structures have been on the Property for over thirty (30) years yet no complaint has been noted in the record. If the structures had some negative impact on the neighborhood, the Board would expect evidence demonstrating such effect to be introduced into 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 Applicant has demonstrated that the variances sought will allow the Applicant to retain a reasonably sized dwelling, deck, and ramp on the Property. The Board notes that portions of the deck and ramp have been reduced in size to minimize the need for the west side yard variances.

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
year from the date below the application
becomes void.

Date November 22, 2016