

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: JAMES P. SHUGART

(Case No. 11851)

A hearing was held after due notice on October 3, 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 Applicant is seeking a variance of 3.5 feet from the ten (10) feet side yard setback requirement on the south side for a proposed roof over an existing deck. This application pertains to certain real property located on the southeast side of Canvasback Road approximately 620 feet northeast of Swann Drive (911 Address: 36984 Canvasback Road, Selbyville); said property being identified as Sussex County Tax Map Parcel Number 5-33-12.16-407.00.

1. The Board was given copies of the Application, an undated survey of the Property, an aerial photograph of the Property, and a portion of the tax map.
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 James P. Shugart was sworn in to testify about the Application.
4. The Board found that Mr. Shugart testified that he built the two-story dwelling in 2013 and he moved to the Property permanently in 2014.
5. The Board found that Mr. Shugart testified that the Property is located in Swann Keys.
6. The Board found that Mr. Shugart testified that, in 2013, he was granted a similar variance for a similar roof needed over an existing entrance on the first floor. The proposed second floor roof will be constructed with the same material and by the same builder as the existing first floor deck.
7. The Board found that Mr. Shugart testified that the proposed roof will provide shelter when entering and exiting the dwelling at the second floor level and the covered entrances protect against the elements.
8. The Board found that Mr. Shugart testified that the neighbors have no objection to the Application.
9. The Board found that Mr. Shugart testified that the proposed roof will not encroach farther into the side yard setback than the existing structures.
10. The Board found that Mr. Shugart testified that there are steps leading to the first floor landing and steps leading to the second floor landing.
11. The Board found that Mr. Shugart testified that he intends to place a cover on the deck in the rear yard as well but that deck is within the building envelope.
12. The Board found that Mr. Shugart testified that he does not intend to enclose the deck.
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.

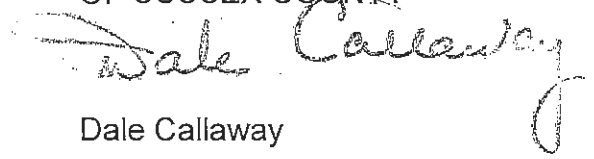
- a. The Property is clearly unique as it is a small lot with a narrow shape. The Property was created and developed prior to the enactment of the Sussex County Zoning Code and consists of only 4,062 square feet; as is clearly shown on the survey. The small size of the Property has created an exceptional practical difficulty for the Applicant and this difficulty is exacerbated by the narrowness of the of the Property which is only 40 feet wide. These unique physical conditions have created an unusual and limited building envelope for the Applicant.
- b. Due to the uniqueness of the Property, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The dwelling was constructed several years ago and the Applicant seeks to add a roof over existing decks to provide cover from the elements. A similar cover is found on the first floor decks and the Applicant wants a similar roof over the second floor decks. These decks will not be enclosed. The Applicant, however, is unable to cover these decks 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 Applicant to make these reasonable improvements. The Board is convinced that the shape and location of these improvements are reasonable, which is confirmed when reviewing the survey provided by the Applicant. Notably, these improvements will be located on the same footprint as the existing deck.
- c. The exceptional practical difficulty was not created by the Applicant. The Property was created and developed prior to the enactment of the Sussex County Zoning Code and is an undersized lot with an unusual width. These unique physical conditions have resulted in a limited building envelope and have created the exceptional practical difficulty for the Applicant.
- 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 dwelling has been on the Property for several years without recorded complaints and the proposed improvements will be within the footprint of the existing decks. Despite the longstanding location of the decks and notification to neighbors, no complaints were noted in the record about its location. Rather, neighbors have indicated their support to the Applicant for the requested variance. 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 Applicant has demonstrated that the variance sought will allow the Applicant to cover the existing decks on the same footprint. The decks will not be enclosed and will not extend farther into the setback area.

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 December 13, 2016