

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: ANTHONY BALSAMO

(Case No. 11852)

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 variances from the front yard, side yard, and rear yard setback requirement.

Findings of Fact

The Board found that the Applicant is seeking a variance of seven (7) feet from the thirty (30) feet front yard setback requirement for a proposed dwelling, a variance of four (4) feet from the ten (10) feet side yard setback requirement on the west side for a proposed outside shower, and a variance of five (5) feet from the twenty (20) feet rear yard setback requirement for a proposed deck and porch. This application pertains to certain real property located on the north side of Hayes Avenue approximately 269 feet west of Jefferson Avenue (911 Address: None Available); said property being identified as Sussex County Tax Map Parcel Number 5-33-20.19-55.00.

1. The Board was given copies of the Application, a portion of the tax map of the area, an aerial photograph of the Property, and a proposed site plan dated September 15, 2015.
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 Anthony Balsamo was sworn in to testify about the Application.
4. The Board found that Mr. Balsamo testified that he is building a new house for a client and the Applicant is trying to use as much of the Property as possible. The Property is currently vacant.
5. The Board found that Mr. Balsamo testified that the Property is narrow and shallow.
6. The Board found that Mr. Balsamo testified that the Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code and that it is difficult to build a decent sized house with porches within the setback areas.
7. The Board found that Mr. Balsamo testified that Cape Windsor is a nearby community with setbacks similar to what is being proposed here.
8. The Board found that Mr. Balsamo testified that the owner of the Property was unaware of the setback requirements when they purchased the Property.
9. The Board found that Mr. Balsamo testified that the variances will not alter the character of the neighborhood.
10. The Board found that Mr. Balsamo testified that there are three (3) story condos in the area and the lot to the west is vacant.
11. The Board found that Mr. Balsamo testified that the neighbors support the Application and are happy to see the lot developed.
12. The Board found that Mr. Balsamo testified that the variances requested are the minimal variances needed.
13. The Board found that Mr. Balsamo testified that there will be adequate space on the Property for parking.
14. The Board found that Mr. Balsamo testified that the proposed dwelling will measure 30 feet wide by 56 feet deep and will not fit on the lot without variances. The proposed dwelling will be one (1) story with dormers and will have a block

- foundation. The first floor deck will be covered and the second floor of the deck will serve as a balcony. The stairs in the side yard will not be covered.
15. The Board found that Mr. Balsamo testified that the outside shower will be enclosed with vinyl material. The outside shower cannot be placed under the dwelling as the crawl space will be only 4 feet tall.
 16. The Board found that Mr. Balsamo testified that he did not consider a detached shed on the Property for storage. The proposed storage area will give access to the crawl space and will be considered part of the dwelling structure.
 17. The Board found that Mr. Balsamo testified that the proposed dwelling is similar to other dwellings in the neighborhood.
 18. The Board found that Mr. Balsamo testified that there are no flooding issues on the Property.
 19. The Board found that Mr. Balsamo testified that the edge of Hayes Avenue is not even with the property line.
 20. The Board found that Theresa Pyle, Charles Pyle, Frank Perry, Charles Meade, Vince Perry, Richard Bombay, and Daniel Nedwick were sworn in and testified in opposition to the Application.
 21. The Board found that Ms. Pyle testified that she lives five (5) lots down from the Applicant's lot.
 22. The Board found that Ms. Pyle testified that the lots are small but the Applicant was aware of the lot size and the setback requirements when he purchased the lot.
 23. The Board found that Ms. Pyle testified that the reduction of the setback areas will result in the loss of privacy while increasing parking and fire hazard concerns.
 24. The Board found that Ms. Pyle testified that Hayes Avenue is the Maryland / Delaware State line and the properties across the street are in Maryland.
 25. The Board found that Mr. Pyle testified that he has owned Property since the Edgewater Acres development was created.
 26. The Board found that Mr. Pyle testified that there have never been manufactured homes in the development and the majority of dwellings in the area are on five (5) block high foundations.
 27. The Board found that Mr. Pyle testified that the community is trying to maintain a common house size in the community and the existing dwellings in the neighborhood are similar in size.
 28. The Board found that Mr. Pyle testified that a larger dwelling would negatively affect the neighborhood by decreasing property values.
 29. The Board found that Frank Perry testified that the proposed dwelling would affect the views of the lagoon and that there have been no variances granted in the rear yard because the view would be affected.
 30. The Board found that Mr. Meade testified that he has been a resident for thirty-one (31) years and he developed his property within the setback areas. All the lots measure 50 feet by 100 feet and have been developed in strict conformity with the Sussex County Zoning Code. He believes the dwelling should be built within the setback requirements as well.
 31. The Board found that Mr. Meade testified that the variances would alter the character of the neighborhood.
 32. The Board found that Vince Perry testified that he lives nearby and he feels that the proposed dwelling is too large and will block views of the water. He also believes that proposed dwelling will create parking issues and fire hazards.
 33. The Board found that Mr. Bombay testified that he owns the adjacent Lot 8 – which is vacant.
 34. The Board found that Mr. Bombay testified that flooding is a common occurrence on the lots including the Applicant's lot.

35. The Board found that Mr. Bombay testified that the Property can be developed in strict conformity with the Sussex County Zoning Code.
36. The Board found that Mr. Bombay testified that there are parking issues in the development.
37. The Board found that Mr. Bombay testified that the dwellings in the area are similar in size.
38. The Board found that Mr. Nedwick testified that he owns Lot 6 which is to the east of the Property and that he objects to the Application for the same reasons that have been stated.
39. The Board found that no parties appeared in support of the Application.
40. The Board found that ten (10) parties appeared in opposition to the Application.
41. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, the Board determined that the application failed to meet the standards for granting a variance. The findings below further support the Board's decision to deny the Application.
 - a. The Board was not convinced that there was some unique physical condition related to the Property which has created an exceptional practical difficulty. The Property is a lot of a similar size to neighboring lots as shown on the tax map and the property owner knew or should have known the size of the vacant lot and its building envelope when he acquired the Property. Despite the having a blank slate upon which to work, the Applicant decided to build a home on the Property outside of the setback areas. No evidence was presented by the Applicant demonstrating that the Property has some unique, natural feature which has created an exceptional practical difficulty for the Applicant. The Property is a rectangular lot and has no unusual shape and its size is the same as other lots in the neighborhood. The survey shows that there is adequate space to build the dwelling, deck, and outdoor shower without a variance; albeit with a different, and likely smaller, design. Conversely, the difficulty, if any, appears to be entirely self-created by the Applicant's desire to exceed the setback requirements set forth in the Sussex County Zoning Code by placing the dwelling, deck, and outside shower in the setback area rather than in the building envelope.
 - b. The Applicant failed to convince the Board that the Property could not be developed in strict conformity with the Sussex County Zoning Code. Likewise, the Board was not convinced that the variances were necessary to enable the reasonable use of the Property. The Property is a vacant lot and the Applicant has a blank slate upon which to work. There was no evidence of an unusual condition which would otherwise limit the building envelope. Rather, the Applicant proposes to construct a dwelling, deck, and outdoor shower outside the building envelope. The testimony from neighbors, which the Board finds persuasive and convincing, indicates that the Property is the same size as other lots in the neighborhood and neighbors have built their homes within the setback areas. The Applicant failed to demonstrate that a reasonably sized dwelling, deck, and porch could not be built in strict conformity with the Code. It appears to the Board that the Applicant can comply with the Sussex County Zoning Code but does not want to comply. The Board finds that the Applicant could reasonably use the Property by building a smaller home or redesigning the proposed dwelling to fit within the building envelope.
 - c. The exceptional practical difficulty was created by the Applicant. As previously discussed, there are no unique conditions to the Property which have otherwise created an exceptional practical difficulty. Rather, the difficulty, if any, appears to be entirely self-created by the Applicant's desire to exceed the setback requirements set forth in the Sussex County Zoning

Code. The Applicant can clearly use the Property without the need for a variance.

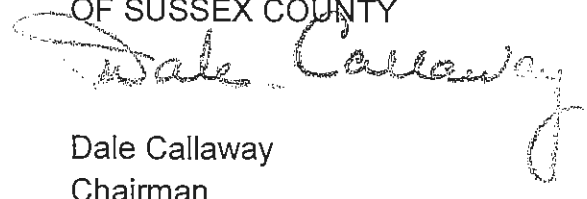
- d. The Board also finds persuasive the testimony of neighbors that the proposed variances would alter the essential character of the neighborhood. The proposed dwelling will clearly exceed the setback areas in an area where parking has been a problem. The Applicant testified that the neighbors support the Application but the record was clear that they do not. Notably, both neighbors adjacent to the Property object to the Application. The Applicant also referenced large condominiums across the street but those units are located in a different state. Rather, the Board received numerous statements from opposition that the proposed dwelling is not consistent with the character of the neighborhood and that the dwelling would impact views, privacy, parking, and property values while also increasing the risk of fire hazards. These statements were unrebutted by the Applicant and the Board finds them to be convincing.
- e. Since the variances are not necessary to enable the reasonable use of the Property, the Board also finds that the variances requested are not the minimum variances necessary to afford relief.

The Board denied the variance application 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 denied. The Board Members in favor of the Motion to Deny 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 deny the variance application.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY


Dale Callaway
Chairman

Date December 13, 2016.