

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: MICHAEL JAY RAMSEY AND DEBRA ANN RAMSEY

(Case No. 11879)

A hearing was held after due notice on November 21, 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 were seeking a variance of 6.8 feet from the forty (40) feet front yard setback requirement for porch, a variance of 0.6 feet from the forty (40) feet front yard setback requirement for an existing dwelling, a variance of 2.1 feet from the five (5) feet rear yard setback requirement for an existing shed, a variance of five (5) feet from the ten (10) feet rear yard setback requirement for an existing detached garage, and a variance of 7.7 feet from the ten (10) feet side yard setback requirement on the southwest side for an existing detached garage. This application pertains to certain real property located on the south side of Railway Road approximately 66 feet west of Wilmington Street in Banks Acres (911 Address: 31394 Railway Road, Ocean View); said property being identified as Sussex County Tax Map Parcel Number 1-34-12.00-1188.00.

1. The Board was given copies of the Application, a portion of the tax map of the area, an aerial photograph of the Property, a Certificate of Compliance dated October 20, 1975, and a survey of the Property dated October 5, 2016.
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 Michael Ramsey and Debra Ann Ramsey were sworn in to testify about the Application. Raymond Tomasetti, Jr., Esquire, presented the case on behalf of the Applicants and submitted pictures for the Board to review.
4. The Board found that Mr. Tomasetti stated that the Applicants purchased the Property in October 2016 and a survey completed for settlement showed the encroachments.
5. The Board found that Mr. Tomasetti stated that the residence on the Property is a one-story manufactured home. A previous owner placed the manufactured home on the Property in 1975 and received a Certificate of Compliance.
6. The Board found that Mr. Tomasetti stated that a previous owner obtained a building permit to place a garage on the Property. The detached garage was built in 1979 and the deck was built in 1982.
7. The Board found that Mr. Tomasetti stated that the previous owner did not obtain permits for the existing sheds and gazebo but the Applicants have obtained the building permits for the shed, decks, and gazebo.
8. The Board found that Mr. Tomasetti stated that the Property was previously serviced by a septic system and it is believed that the septic system was located in the rear yard. The Property is now served by central sewer and there is a well in the front yard. The Applicants believe that the location of the septic system and well determined the placement of the existing sheds and detached garage.
9. The Board found that Mr. Tomasetti stated that the dwelling is set back from the road in a similar manner as other homes in the neighborhood.

10. The Board found that Mr. Tomasetti stated that the pictures of the side yard adjacent to the garage and driveway give the impression that the side yard of the Property is wider than it actually is and that there is more space between the garage and the neighbor's property.
11. The Board found that Mr. Tomasetti stated that the Property is unique due to its shape.
12. The Board found that Mr. Tomasetti stated that the Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code.
13. The Board found that Mr. Tomasetti stated that the exceptional practical difficulty was not created by the Applicants.
14. The Board found that Mr. Tomasetti stated that the variances will not alter the essential character of the neighborhood.
15. The Board found that Mr. Tomasetti stated that the variances requested are the minimum variances necessary to afford relief.
16. The Board found that Mr. Ramsey, under oath, affirmed the statements made by Mr. Tomasetti.
17. The Board found that Mr. Ramsey testified that the neighbors have no objection to the Application.
18. The Board found that Mr. Ramsey testified that he plans to keep both sheds and will move the shed into compliance.
19. The Board found that Mr. Ramsey testified that the edge of the road is not even with the property line.
20. The Board found that no parties appeared in support of or in opposition to the Application.
21. 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, garage, 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 due to its unique shape. The Property is shaped like a parallelogram and this shape has created an odd building envelope. The building envelope was also likely reduced by the location of a septic system in the rear yard. While the Property is now serviced by central sewer, the Property was previously serviced by a septic system that was likely located in the rear yard. Given the placement of the structures on the Property, the septic system was probably located inside the building envelope. Ultimately, however, the unique shape of the Property limits the buildable area available to the Applicants and have created an exceptional practical difficulty for the Applicants who seek to retain an existing home, garage, and porch on the lot. The situation is also unique because the Applicants reasonably believed that the dwelling complied with the Sussex County Zoning Code as a previous owner obtained a Certificate of Compliance in 1975.
 - 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 shape and the buildable area thereof is limited due to its shape. The Applicants seek to retain a dwelling, garage, and porch of reasonable size but are 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, porch, and garage to remain 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 and pictures provided by the Applicants.

- c. The exceptional practical difficulty was not created by the Applicants. The Applicants did not create the unusual shape of the Property. The unique lot shape has resulted in a limited building envelope on the Property and the oddly shaped building envelope has created the exceptional practical difficulty. The Applicants also only recently acquired the Property and these structures were placed on the lot many years ago by a prior owner. The dwelling has been on the lot since 1975 and the garage has been on the lot since 1979. Other structures on the Property have been in their current locations for many years as well. 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 and by the placement of the structures thereon 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, porch, and garage will have no effect on the character of the neighborhood. The structures have been on the Property for many years and, despite the longstanding locations of these structures, no complaints were noted in the record about the locations of the structures. 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. The Board also notes that the variances into the front yard are unlikely to be noticed as there is a significant distance between the edge of paving and the front property line as noticed when reviewing the survey and the photographs provided by the Applicants. Likewise, the side yard variance for the garage is unlikely to be noticed due to the nature of the development of the area to the southwest of the garage.
 - 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 retain a reasonably sized dwelling, porch, and garage on the Property. The Applicants do not intend to make any additions to the structures and only seek the variances to allow the existing structures to remain in their current locations.
22. 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 variance for the shed failed to meet the standards for granting a variance. The findings below further support the Board's decision to deny the variance for the shed.
- a. The Applicants have informed the Board that the shed which encroaches into the rear yard setback area can be moved into compliance with the Sussex County Zoning Code. As such, the variance for the shed is not necessary to enable reasonable use of the Property.
 - b. Furthermore, since the shed can be moved into compliance with the Code, the rear yard variance requested for the shed is not the minimum variance necessary to afford relief. Rather, no variance for the shed will be needed once it is moved into compliance with the Code.

The Board granted the variance application for the garage, porch, and dwelling finding that it met the standards for granting a variance. The Board denied the variance application for the shed finding that it did not 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 2/1/2017