

**BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY**

**IN RE: ALFRED BALDASSARI & MICHELENA R. BALDASSARI**

**(Case No. 11881)**

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 and side yard setback requirements.

Findings of Fact

The Board found that the Applicants are seeking a variance of 1.8 feet from the five (5) feet side yard setback requirement on the south side for an existing shed and a variance of 10.5 feet from the thirty (30) feet front yard setback requirement for an existing deck and set of steps. This application pertains to certain real property is located on the east side of Woodland Circle across from Butternut Court in Angola by the Bay (911 Address: 34004 Woodland Circle Lewes); said property being identified as Sussex County Tax Map Parcel Number 2-34-18.05-87.00.

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 letter of no objection from the Angola by the Bay Property Owners Association, a letter of no objection from Theodore & Ginamarie Kehagias, a building permit dated September 17, 2001, a Certificate of Compliance dated October 16, 2002, a property record card, assessment records, and a survey of the Property dated October 25, 2016.
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 Gina Kehagias, Cynthia Baker, and Michelena Baldassari were sworn in to testify about the Application. They submitted pictures of the Property for the Board to review.
4. The Board found that Ms. Kehagias testified that she is the Applicants' daughter and the Applicants are selling the Property. A recent survey showed the encroachments and the Applicants were unaware of the encroachments until the survey was completed.
5. The Board found that Ms. Kehagias testified that the Property is small and is unique due to its size.
6. The Board found that Ms. Kehagias testified that the shed is on a concrete pad and hooked up to electric and cannot be moved into compliance. The shed has been in its present location for approximately 30 years.
7. The Board found that Ms. Kehagias testified that the Applicants did not create the exceptional practical difficulty and the Applicants believed the shed complied with the setback requirements.
8. The Board found that Ms. Kehagias testified that the shed and deck will not alter the essential character of the neighborhood.
9. The Board found that Ms. Kehagias testified that Applicants have not received any complaints about the shed or the deck.
10. The Board found that Ms. Kehagias testified that the deck was built in 1982 and has been in its present location since that time. The deck is in good condition and is attached to the house.
11. The Board found that Ms. Kehagias testified that the Applicants believed the deck also complied with the setback requirements.

12. The Board found that Ms. Kehagias testified that a septic system was located in the rear yard at one point but the Property is now serviced by central sewer.
13. The Board found that Ms. Baker testified that the location of the septic system probably impacted the location of the shed because the lot is so small.
14. The Board found that one (1) party appeared in support of the Application.
15. The Board found that no parties appeared in opposition to the Application.
16. 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 as it is a small lot in Angola by the Bay. This unique size has created a small building envelope and has created an exceptional practical difficulty for the Applicants who seek to retain a reasonably sized shed, deck, and steps on the Property. The exceptional practical difficulty was exacerbated by the fact that the Property was previously serviced by a septic system which likely took up a portion of the building envelope and impacted the placement of the shed.
  - 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 building envelope due to its small size. The Applicants seek to retain an existing shed, deck, and steps but are unable to do so without violating the Sussex County Zoning Code. The variances are thus necessary to enable reasonable use of the Property as the variances will allow a reasonably sized shed, deck, and steps 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 provided by the Applicants. The Board also notes that the structures are permanent structures and cannot simply be moved into compliance with the Code. The shed is located on a concrete pad and is serviced by electricity and the deck is attached to the house.
  - c. The exceptional practical difficulty was not created by the Applicants. The Applicants did not create the unique size of the lot which has resulted in a limited building envelope on the Property. The limited building envelope was exacerbated by the location a septic system which serviced the Property at the time the structures were built. The unique characteristics of the Property are clear from the record and the survey. Since the Property has unique characteristics, the Board find that the Applicants did not create the exceptional practical difficulty.
  - 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 shed, deck and steps have been on the Property for thirty (30) years or longer without recorded complaints. Despite the longstanding location of these structures and notification to neighbors, no complaints were noted in the record about their location. Rather, the Board received letters of no objection from neighbors and the homeowners association. 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 regulation at issue. The Applicants have demonstrated that the variances sought will allow the Applicants to retain the shed, deck, and

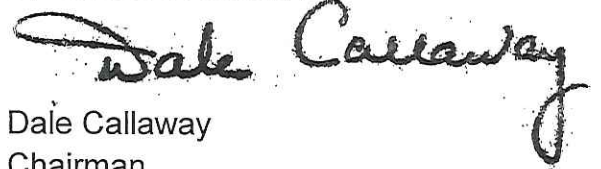
steps in their existing locations. No additions to those structures are being proposed.

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 2/7/2017.