

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: MICHAEL J. BAIER AND HOPE C. BAIER

(Case No. 11895)

A hearing was held after due notice on December 19, 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 rear yard setback requirement.

Findings of Fact

The Board found that the Applicants are seeking a variance of five (5) feet from the twenty (20) feet rear yard setback requirement for an existing four season room. This application pertains to certain real property located on the west side of Cleveland Avenue approximately 160 feet south of Lincoln Drive (911 Address: 38768 Cleveland Avenue, Selbyville); said property being identified as Sussex County Tax Map Parcel Number: 5-33-20.14-50.00.

1. The Board was given copies of the Application, a letter from Raymond Tomasetti dated November 8, 2016, a portion of the tax map of the area, a survey of the Property dated September 9, 2016, and an aerial photograph 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 Michael Baier was sworn in to testify about the Application. Raymond Tomasetti, Jr., Esquire, presented the case on behalf of the Applicants and submitted an exhibit booklet for the Board to review.
4. The Board found that variances were previously granted for structures on the Property at the November 7, 2016, meeting. The rear yard variance request was not initially discovered and advertised for that application.
5. The Board found that Mr. Tomasetti stated that the Board granted variances for the Property on November 7, 2016, but the rear yard variance was not part of that application.
6. The Board found that Mr. Tomasetti stated that the existing dwelling was built in 1973.
7. The Board found that Mr. Tomasetti stated that the Property measures 50 feet by 90 feet which makes it unique in size.
8. The Board found that Mr. Tomasetti stated that the Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code.
9. The Board found that Mr. Tomasetti stated that the exceptional practical difficulty was not created by the Applicants.
10. The Board found that Mr. Tomasetti stated that the Applicants are the third owners of the Property and all structures existed when the Applicants purchased the Property.
11. The Board found that Mr. Tomasetti stated that the variance does not alter the character of the neighborhood. Most of the houses along this street are similarly situated in regard to the lagoon.
12. The Board found that Mr. Tomasetti stated that the variance requested is the minimum variance necessary to afford relief.
13. The Board found that Mr. Baier, under oath, affirmed the statements made by Mr. Tomasetti.
14. The Board found that Mr. Baier testified that the four season room was built in 1985.

15. The Board found that no parties appeared in support of or 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 clearly unique as it is a small and narrow lot. The Property was created by a prior owner and consists of only 4,493 square feet; as is clearly shown on the survey. The small size of the Property has created an exceptional practical difficulty for the Applicants and this difficulty is exacerbated by the narrowness of the Property which is only 50 feet wide. These unique physical conditions have created an unusual and limited building envelope for the Applicants.
 - b. Due to the uniqueness of the Property, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The four season room was constructed many years ago and the Applicants seek to retain the four season room on the same footprint but are unable to do so 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 four season room to remain on the Property. The Board is convinced that the shape and location of this four season room are reasonable, which is confirmed when reviewing the survey provided by the Applicants.
 - c. The exceptional practical difficulty was not created by the Applicants. The Property was created by a prior owner and is an undersized lot with an unusual narrowness. The Board notes that the Property is narrow which greatly limits the building envelope of the lot. The Applicants did not build the four season room or create the size and shape of the lot. Rather, those conditions pre-existed the Applicants' acquisition of the Property. These unique physical conditions have resulted in a limited building envelope and have created the exceptional practical difficulty for the Applicants.
 - 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 four season room has been on the Property for many years without recorded complaints and no changes to the four season room are being proposed. Despite the longstanding location of the four season room and notification to neighbors, no complaints were noted in the record about its location either. 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 Applicants have demonstrated that the variance sought will allow the Applicants to retain the four season room on the Property. No additions to the four season room are being proposed.

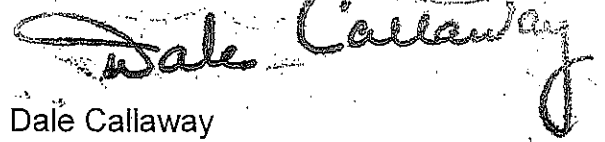
The Board granted the variance application finding that it met the standards for granting a variance.

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