

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: TIMOTHY J. LONG & LAURIE A. LONG

(Case No. 11899)

A hearing was held after due notice on January 9, 2017. The Board members present were: Mr. Dale Callaway, Mr. John Mills, Mr. Jeff Hudson, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for variances from the front yard setback requirement.

Findings of Fact

The Board found that the Applicant is seeking a variance of 13.7 feet from the forty (40) feet front yard setback requirement for a proposed deck and a variance of 18 feet from the forty (40) feet front yard setback requirement for proposed steps. This application pertains to certain real property located on the north side of Lighthouse Road approximately 450 feet east of Coastal Highway (Route 1) (911 Address: 37573 Lighthouse Road, Fenwick Island); said property being identified as Sussex County Tax Map Parcel Number 1-34-23.20-147.00.

1. The Board was given copies of the Application, a survey dated October 15, 2016, an aerial photograph of the Property, and a portion of the tax map.
2. The Board found that the Office of Planning & Zoning received four (4) letters of support to the Application and no correspondence in opposition to the Application.
3. The Board found that Timothy Long and Laurie Long were sworn in to testify about the Application. William Scott, Esquire, presented the case on behalf of the Applicants and submitted exhibits for the Board to review including photographs, letters of support, and surveys of the Property.
4. The Board found that Mr. Scott stated that the Applicants intend to remove an existing dwelling on the Property and replace it with a new home.
5. The Board found that Mr. Scott stated that the existing house, which was built years ago, is located 16 feet from the front property line and is located almost entirely in the setback area. The shed in the rear yard is also located near the rear property line.
6. The Board found that Mr. Scott stated that the existing dwelling, shed, and propane tank will be removed.
7. The Board found that Mr. Scott stated that the proposed dwelling will meet the side and rear yard setback requirements.
8. The Board found that Mr. Scott stated that the average front yard setback in the neighborhood is 15.3 feet from the front property line.
9. The Board found that Mr. Scott stated that older homes in the neighborhood have been removed and replaced with newer homes.
10. The Board found that Mr. Scott stated that the Property is in the unincorporated part of Fenwick Island.
11. The Board found that Mr. Scott stated that the neighbors support the Application.
12. The Board found that Mr. Scott stated that the lot was created and the house was constructed prior to the enactment of the Sussex County Zoning Code.
13. The Board found that Mr. Scott stated that the Property is unique as it is narrow. The lot measures 50 feet by 100 feet.
14. The Board found that Mr. Scott stated that the Property cannot be developed in strict conformity with the Sussex County Zoning Code and that the variances are necessary to enable reasonable use of the Property.

15. The Board found that Mr. Scott stated that the proposed dwelling will meet the current flood zone requirements.
16. The Board found that Mr. Scott stated that the difficulty is not being created by the Applicants.
17. The Board found that Mr. Scott stated that the variances will not alter the essential character of the neighborhood and that the proposed dwelling will be more in character with the neighborhood than the existing home. Other variances have also been granted in the neighborhood.
18. The Board found that Mr. Scott stated that the variances requested are the minimum variances necessary to afford relief.
19. The Board found that Mr. Long, under oath, affirmed the statements made by Mr. Scott.
20. The Board found that Mr. Long testified that the proposed dwelling will be a three (3) story structure and each floor will consist of approximately 1,200 square-feet.
21. The Board found that Mr. Long testified that the dwelling will be elevated to help prevent problems associated with flooding and parking. The elevated dwelling will allow for parking underneath the home. Parking along the street is challenging.
22. The Board found that Mr. Long testified that the proposed deck will be on each level of the home. The decks will not be enclosed or screened-in.
23. The Board found that no parties appeared in support of or in opposition to the Application.
24. 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 4,997 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. The situation is also unique because neighboring homes are located closer to the front yard property line than is allowed by the setback requirements. If the Applicants were dealing with a vacant lot rather than replacing an existing structure, the Applicants could average the distances from neighboring homes and the front property line and place a home at the distance away from the front property line. This average distance is only 15.3 feet and the Applicants proposed dwelling would clearly meet that setback requirement. Since the Applicants are replacing an existing dwelling, however, this option is not available.
 - b. Due to the uniqueness of the Property and the situation, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Applicants seek to replace the existing dwelling which pre-dates the enactment of the Sussex County Zoning Code. The existing dwelling greatly encroaches into the setback area and the Applicants seek to replace this home with a newer home that is more similar to other homes in the neighborhood. The Applicants, however, are unable to replace the dwelling while still meeting the setback requirements. The testimony confirms that the proposed home is consistent with others in the neighborhood. 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 home to be constructed on the Property. The Board is convinced that

the shape and location of this home are reasonable, which is confirmed when reviewing the survey provided by the Applicants.

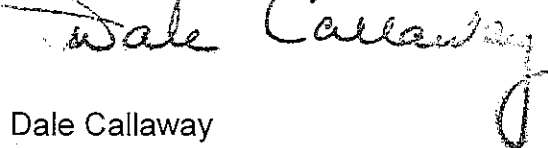
- c. The exceptional practical difficulty was not created by the Applicants. The Property was created by a prior owner and is an undersized lot with an unusual narrowness. The Board notes that the Property's narrow width greatly limits the building envelope of the lot. The Applicants did not build the existing dwelling, which greatly encroaches into the setback areas, 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 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 proposed dwelling will replace an existing dwelling which is quite old. The proposed dwelling will be similar to other homes in the neighborhood and lessen or eliminate the encroachments into the setback areas. The Applicants have submitted letters of support from neighbors which indicates that the neighbors do not object to the proposed dwelling and its placement. 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 construct a reasonably sized dwelling on the Property. The Board is convinced that the Applicants explored ways to minimize the encroachments into the setback areas. The Board also notes that the proposed dwelling is significantly more compliant with the Sussex County Zoning Code than the existing dwelling.

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, and Mr. Brent Workman. No Board Member voted against the Motion to approve the variance application. Mr. Norman Rickard did not participate in the discussion or vote of this application.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY


Dale Callaway
Chairman

If the use is not established one (1)
year from the date below the application
becomes void.

Date February 21, 2017.