

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

**IN RE: HENRY BENAQUISTA & MARGARET BENAQUISTA**

**(Case No. 11938)**

A hearing was held after due notice on April 3, 2017. The Board members present were: Mr. Dale Callaway, Mr. John Mills, Mr. Jeff Hudson, Mr. Norman Rickard, Mr. Brent Workman.

Nature of the Proceedings

This is an application for variances from the rear yard and side yard setback requirements.

Findings of Fact

The Board found that the Applicants are requesting a variance of 9.7 feet from the ten (10) feet rear yard setback requirement for an existing deck, a variance of 4.0 feet from the ten (10) feet side yard requirement on the north side for an existing attached shed, and a variance of 0.4 feet from the eight (8) feet rear yard setback requirement for an existing chimney. This application pertains to certain real property located on the northeast corner of North Squirrel Run and Mane Boulevard approximately 872 feet west of Wil King Road (Route 288) (911 Address: 32432 North Squirrel Run, Lewes); said property being identified as Sussex County Tax Map Parcel Number 2-34-6.00-725.00.

1. The Board was given copies of the Application, a portion of the tax map of the area, an aerial photograph of the Property, pictures of the Property, letters of support, and a survey of the Property dated September 20, 2016.
2. The Board found that the Office of Planning & Zoning received six (6) letters in support of the Application and no correspondence in opposition to the Application.
3. The Board found that Henry Benaquista and Margaret Benaquista were sworn in to testify about the Application. Bill Schab, Esquire, presented the case on behalf of the Applicants. Mr. Schab submitted an additional letter of support.
4. The Board found that Mr. Schab stated that the Property is unique because it is a corner lot.
5. The Board found that Mr. Schab stated that the dwelling meets the setback requirements but leaves no room for additions thereto.
6. The Board found that Mr. Schab stated that the Applicants purchased the existing dwelling with a small deck in the rear yard. The deck was so small, however, that it was unusable and dangerous. The Applicants retained a contractor to expand the deck and improve the safety concerns of the deck.
7. The Board found that Mr. Schab stated that the chimney was constructed with the original home and a Certificate of Occupancy was issued for it. The chimney slightly encroaches into the setback area.
8. The Board found that Mr. Schab stated that the Applicants retained a contractor to place a stand-alone shed but the contractor attached the shed to the house. A stand-alone shed only has to be 5 feet from the side yard property line.
9. The Board found that Mr. Schab stated that Sussex County would not issue a Certificate of Occupancy for the shed due to the encroachment into the setback areas.
10. The Board found that Mr. Schab stated that the attached shed is attractive and matches the dwelling.
11. The Board found that Mr. Schab stated that the additions have improved the Property.
12. The Board found that Mr. Schab stated that the rear yard is adjacent to open space owned by the homeowners association.

13. The Board found that Mr. Schab stated that no one has been adversely affected by the encroachments.
14. The Board found that Mr. Schab stated that, in order to comply with the setback requirements without a variance, both the shed and deck would have to be removed.
15. The Board found that Mr. Schab stated that the Applicants relied on their contractor to make these improvements while complying with the Sussex County Zoning Code.
16. The Board found that Mr. Schab stated that the variances will not alter the essential character of the neighborhood and the variances requested are the minimum variances necessary to afford reasonable use of the Property.
17. The Board found that Mr. Benaquista, under oath, affirmed the statements made by Mr. Schab.
18. The Board found that Mr. Benaquista testified that the deck was extended to reduce the chance of falling off the previous steps. The deck has railings and is much safer than the previous deck.
19. The Board found that Mr. Benaquista testified that he hired contractors to build the deck addition and the contractors obtained the permits. He relied on the contractors to comply with the Sussex County Zoning Code.
20. The Board found that Mr. Benaquista testified that the chimney was on the house when he purchased the house.
21. The Board found that Mr. Benaquista testified that the shed is beautiful. There is no interior access to the shed from the home.
22. The Board found that Mr. Benaquista testified that the area to the rear of the Property is common area for the community.
23. The Board found that Mr. Benaquista testified that the deck is similar in location to other decks in the neighborhood.
24. The Board found that no parties appeared in support of or in opposition to the Application.
25. 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 unrebutted, 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, corner lot consisting of only 7,645 square feet. The size of the lot has created a small building envelope which is exacerbated by the corner setback requirements. The Applicants did not construct the dwelling, chimney, or original deck but they relied on contractors to expand the deck and to build a shed in compliance with the Sussex County Zoning Code. Only after these structures were built did the Applicants learn that the dwelling takes up most of the building envelope and that the shed, deck, and chimney all encroach into the setback areas. Since the Property is a corner lot, it is subject to a greater setback requirement which limits the building envelope on the Property. The Property's unique characteristics combined with the Applicants' detrimental reliance on its contractors has created an exceptional practical difficulty for the Applicants.
  - b. Due to the uniqueness of the lot and the situation, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property is quite small and the building envelope is very limited. The building envelope is further limited by the corner setback requirements. The Applicants seek to retain an existing shed, deck, and chimney which encroach into the setback areas but are unable to do so without violating the Code. The Applicants relied on contractors to build these improvements in compliance with the Code only to learn afterwards that the structures did not comply with the Code. It is clear to the Board that, due to the unique

conditions of the lot, the variances are necessary to enable reasonable use of the Property as a reasonably sized shed, deck, and chimney cannot be retained on the Property without a variance. The Board is convinced that the shape and location of the shed, deck, and chimney 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 Applicants did not create the small size of the lot and the small building envelope. These conditions have greatly limited the Applicant's ability to place the shed, deck, and chimney on the Property in compliance with the Sussex County Zoning Code. Moreover, the Applicants did not place the chimney on the Property. The chimney was constructed by a prior owner. Likewise, the Applicants relied on contractors to construct the shed and deck in compliance with the Code only to learn later that the structures did not comply with the Code. The Board is convinced that the exceptional practical difficulty was not created by 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 Board is convinced that the structures will have no effect on the character of the neighborhood. No complaints were noted in the record about the location of the structures and 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. Rather, the Board received letters from neighbors supporting the requests. The Board also notes that the encroachments into the rear yard setback area are unlikely to be noticed because the rear yard is adjacent to common areas owned by the community. Likewise, if the shed was a stand-alone shed, it could be placed 5 feet from the side yard property line. The attached shed, which has no access from the interior of the home, is only 4 feet from the property line. The Board is not convinced that the attached shed has any adverse effect on neighboring property.
- 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 reasonably sized shed, deck, and chimney on the Property. No additions to these structures are 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 Members 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 May 16, 2017