

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: ESTATE OF DOROTHY J. WALLIN

(Case No. 11966)

A hearing was held after due notice on June 5, 2017. The Board members present were: Mr. Dale Callaway, Ms. Ellen Magee, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman.

Nature of the Proceedings

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

Findings of Fact

The Board found that the Applicant is seeking a variance of 6 feet from the twenty (20) feet rear yard setback requirement for a deck and a variance of 15 feet from the twenty (20) feet rear yard setback requirement for steps. This application pertains to certain real property located on the south side of Elmwood Avenue East approximately 1,177 feet south of Woodland Circle, Angola By the Bay (911 Address: 23805 Elmwood Avenue East, Lewes); said property being identified as Sussex County Tax Map Parcel Number 2-34-18.09-2.00

1. The Board was given copies of the Application, a portion of the tax map of the area, an elevation certificate, a letter from the Angola by the Bay Property Owners Association, Inc., a survey of the Property dated April 11, 2017, 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 Gayle Edwards and Mark Showmaker were sworn in to testify about the Application.
4. The Board found that Mr. Showmaker testified that he and Ms. Edwards are the legal owners of the Property through inheritance.
5. The Board found that Mr. Showmaker testified that the dwelling was built in 1975 and the deck and steps were built at that time. The structures were approved by Sussex County.
6. The Board found that Mr. Showmaker testified that they plan to put the home up for sale but, prior to doing so, they investigated the setbacks for the Property and learned that the deck and steps encroach into the rear yard setback area. The Applicants filed this application because they wanted to be proactive for the next owners.
7. The Board found that Mr. Showmaker testified that the lot has a unique pie shape which necessitated placing the dwelling closer to the rear property line.
8. The Board found that Mr. Showmaker testified that there is common area located adjacent to the rear yard and the common area leads to water.
9. The Board found that Mr. Showmaker testified that, due to the uniqueness of the Property, the Property cannot be further developed.
10. The Board found that Mr. Showmaker testified that the Applicants did not create the exceptional practical difficulty.
11. The Board found that Mr. Showmaker testified that their parents purchased the Property in 1995 and they were unaware of the setback issue at that time.
12. The Board found that Mr. Showmaker testified that the common area has gravel leading to the pond but it was not graveled in the past and likely caused the rear yard of the Property to appear larger than it actually is.
13. The Board found that Mr. Showmaker testified that the variances will not alter the essential character of the neighborhood.

14. The Board found that Mr. Showmaker testified that the home is existing as it was built in 1975 and no additions have been made except that a shed was constructed prior to his family's ownership of the lot.
15. The Board found that Mr. Showmaker testified that the variances requested are the minimum variances necessary to afford relief.
16. The Board found that no parties appeared in support of or in opposition to the Application.
17. 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 due to its odd shape. The Property is somewhat pie-shaped and is narrower in the rear yard than the front yard. The odd shape of the lot has created an unusually shaped building envelope. The situation is also unique because the Applicant did not build the steps or the deck; both of which were located on the Property prior to the Applicant's acquisition thereof. The structures were constructed in 1975 and the Applicant reasonably believed they complied with the Sussex County Zoning Code but a recent survey shows that they actually encroach into the rear yard setback area. The Board finds that the unique physical characteristics of the Property have created an exceptional practical difficulty for the Applicant who seeks to retain a deck and steps on the lot.
 - 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 has a unique shape and the buildable area thereof is limited due to its shape. The Applicant seeks to retain a deck and steps of reasonable size but is 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 deck and steps to remain on the Property. The Board is convinced that the shape and location of the deck and steps are also reasonable, which is confirmed when reviewing the survey provided by the Applicant.
 - c. The exceptional practical difficulty was not created by the Applicant. The Applicant did not create the unusual shape of the Property nor did the Applicant place the deck and steps on the Property. Those structures existed on the Property at the time the Applicant's predecessor-in-interest purchased the lot. The Board is convinced that the exceptional practical difficulty was not created by the Applicant but was created the lot's unique characteristics and the unique circumstances described herein.
 - 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 deck and steps will have no effect on the character of the neighborhood. The structures have been on the Property in their existing location since 1975. The Board also notes that the rear yard of the Property is adjacent to common area owned by the Angola by the Bay community. There is no home on the lands directly behind the Property and it is unlikely that the rear yard variances would have any impact on those lands either. Notably, the structures in the rear yard have been in their present location for over 40 years yet no objection was noted in the record about their location. 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 regulations at issue. The Applicant has demonstrated that the variances sought will allow the Applicant to retain a reasonably sized deck and steps on the Property. No additions or modifications 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, Ms. Ellen Magee, 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
Dale Callaway
Chairman

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

Date August 8, 2017.