

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

**IN RE: GUY MARCOZZI & CHRISTINE MARCOZZI**

**(Case No. 11998)**

A hearing was held after due notice on July 24, 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 front yard, side yard, and rear yard setback requirements.

Findings of Fact

The Board found that the Applicants were seeking a variance of 12.2 feet from the fifteen (15) feet corner front setback requirement on the southeast side for a proposed deck, a variance of 1.2 feet from the five (5) feet side yard setback requirement on the northwest side for an existing shed, a variance of 3.6 feet from the ten (10) feet side yard setback requirement on the northwest side for an existing outdoor shower, and a variance of 1.0 from the seven (7) feet rear yard setback requirement for an existing HVAC system. This application pertains to certain real property located at the south corner of the intersection of Anna B. Street and Fisher Street (911 Address: 38262 Anna B. Street, Rehoboth Beach); said property being identified as Sussex County Tax Map Parcel Number 3-34-20.09-55.01.

1. The Board was given copies of the Application, a portion of the tax map of the area, an aerial photograph of the Property, photographs of the Property, and a survey of the Property dated March 20, 2017.
2. The Board found that the Office of Planning and Zoning received no correspondence in support of the Application and received one (1) letter in opposition to the Application.
3. The Board found that Guy Marcozzi and Christine Marcozzi were sworn in to testify about the Application. Mr. Marcozzi submitted exhibits to the Board to review.
4. The Board found that Mr. Marcozzi testified that the Applicants purchased the Property in April 2017. The home was on the Property when they purchased the home.
5. The Board found that Mr. Marcozzi testified that the Property is small as the lot consists of 5,000 square feet and is a corner lot.
6. The Board found that Mr. Marcozzi testified that the deck will have no negative visual impact.
7. The Board found that Mr. Marcozzi testified that there is approximately 17 feet from the edge of the Property to the edge of Fisher Street which gives the home the appearance of being set back farther from the property line than it actually is. Pine trees also line the property line and a six (6) feet tall privacy fence borders the property line as well.
8. The Board found that Mr. Marcozzi testified that there is no room for expansion without a variance.
9. The Board found that Mr. Marcozzi testified that the shower, shed and HVAC system were placed on the Property by a prior owner and those structures are similar to others in the neighborhood.
10. The Board found that Mr. Marcozzi testified that the shed in the northwest corner will be relocated to minimize the setback encroachment.
11. The Board found that Mr. Marcozzi testified that the steps from the home are very steep and awkward and there is no egress from the rear or side yard. His parents

- have difficulty entering and exiting the home due to the steps. He believes that the steps are not safe. There is no landing at the top of the steps.
12. The Board found that Mr. Marcozzi testified that the exceptional practical difficulty was not created by the Applicants.
  13. The Board found that Mr. Marcozzi testified that the variances will not alter the essential character of the neighborhood.
  14. The Board found that Mr. Marcozzi testified that most homes in the neighborhood have open showers, HVAC systems with outside compressors, sheds, and decks and that many of the homes in the neighborhood are non-conforming structures. Two (2) nearby properties were recently approved for a variance as well.
  15. The Board found that Mr. Marcozzi testified that there is a petition signed by sixteen (16) neighbors in support of the Application and the opposition live farther away from the Property than neighbors who support the Application.
  16. The Board found that Neil Dolan was sworn in to testify in support of the Application. Mr. Dolan owns seven (7) properties in the neighborhood and his daughters live on Anna B Street.
  17. The Board found that Mr. Dolan testified that the home was built about three (3) years ago. He agrees that the steps are very steep and dangerous.
  18. The Board found one (1) party appeared in support of the Application.
  19. The Board found that no parties appeared in opposition to the Application.
  20. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, which the Board has weighed and considered, 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 size as it consists of only 5,000 square feet. The Property is quite small and narrow as evidenced by the survey. The unique size of the Property has created a limited buildable area available to the Applicants and has created an exceptional practical difficulty for the Applicants who seek to retain an existing HVAC system, shower, and shed and to construct a deck on the lot. The Board notes that the building envelope is further constrained by the corner setback requirements.
    - 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 size and the buildable area thereof is limited due to its size. The Applicants seek to retain an existing HVAC system, shower, and shed and to construct a deck on the lot of reasonable size but are 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 existing HVAC system, shower, and shed to remain on the Property for the Applicants to construct a deck on the lot. The shower and HVAC system have been in their current location for some time and the Applicants propose to relocate the shed to lessen the degree of non-conformity due to the shed's current location. The evidence demonstrates that the deck is needed to provide safe access to the home as the existing steps are quite steep and dangerous. The Board is convinced that the shape and location of these structures 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 unusual size of the Property. The Property was developed by a prior owner and all structures, except for the proposed deck, were on the Property when the Applicants purchased the lot. This development has created some of the Applicants' difficulty because the

prior owner constructed steep and dangerous steps to the home, which render the access point along Fisher Street unusable for at least one member of the Applicants' family. Furthermore, the unique lot size has resulted in a limited building envelope on the Property and the small building envelope has created the exceptional practical difficulty because it greatly restricts the Applicants' ability to retain the existing structures and to construct a reasonably safe deck on the Property. The unique characteristics of the Property are clear when reviewing the survey. The Board is convinced that the exceptional practical difficulty was not created by the Applicants but was created the lot's unique characteristics and by the placement of the deck, steps, and shed by a prior owner.

- 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. The HVAC system, shed, and shower have been on the Property for some time and no complaints were noted in the record about their location. The Applicant will actually improve the existing non-conformity regarding the existing shed. Meanwhile, though the Board received a letter opposing the Application, the opposition presented no evidence which would indicate that the variances would somehow alter the essential character of the neighborhood or be detrimental to the public welfare. The Applicant, however, produced a petition of support indicating that neighbors, particularly those most affected by the variances, overwhelmingly support the Application. With regard to the variance for the deck, the Board notes that the property is approximately 17 feet from the edge of paving of Fisher Street thereby giving the false impression that the side yard is larger than it actually is. The visual impact of the encroachment into that setback area is likely difficult to notice due to this significant discrepancy between the property line and the edge of paving.
- 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 the HVAC system and shower on the lot, to relocate the shed, and to construct a reasonably sized deck on the lot.

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 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 September 19, 2017