

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: GERALDINE ALBANO

(Case No. 12007)

A hearing was held after due notice on August 7, 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 and side yard setback requirements.

Findings of Fact

The Board found that the Applicant is seeking a variance of 8.4 feet from the thirty (30) feet front yard setback requirement for an existing deck, a variance of 0.7 feet from the ten (10) feet side yard setback requirement on the south side for an existing dwelling, and a variance of 0.6 feet from the ten (10) feet side yard setback requirement on the south side for an existing dwelling. This application pertains to certain real property is located at the west side of Topher Drive approximately 200 feet south of Blackstone Drive (911 Address: 31588 Topher Drive, Millville); said property being identified as Sussex County Tax Map Parcel Number 1-34-12.00-1975.00.

1. The Board was given copies of the Application, a portion of the tax map of the area, an aerial photograph of the Property, property information, and a survey of the Property dated January 31, 2017.
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 Carl Albano was sworn in to testify about the Application.
4. The Board found that Mr. Albano testified that the Property is unique because it is 75 feet wide and the dwelling has consumed all usable building space.
5. The Board found that Mr. Albano testified that the dwelling would have to be removed or a portion of the dwelling would have to be removed to bring the dwelling into compliance with the Sussex County Zoning Code but neither of these options are feasible because they would cost a significant amount of money.
6. The Board found that Mr. Albano testified that the exceptional practical difficulty was not created by the Applicant.
7. The Board found that Mr. Albano testified that the Property was purchased in 1991.
8. The Board found that Mr. Albano testified that stakes were placed on the Property prior to the placement of the home and the stakes and the home were placed by a third-party contractor.
9. The Board found that Mr. Albano testified that the encroachments were not discovered until January 2017.
10. The Board found that Mr. Albano testified that the variances will not alter the essential character of the neighborhood and the requests will not affect neighboring properties.
11. The Board found that Mr. Albano testified that there have been no complaints of the encroachments.
12. The Board found that Mr. Albano testified that the variances requested represent the minimum variances necessary to afford relief.
13. The Board found that Mr. Albano testified that his mother and father purchased the Property and had the home built 25 years ago. He believes a Certificate of Compliance was issued for the home.

14. The Board found that Mr. Albano testified that his father passed away and the survey was obtained as part of the process to sell the Property.
15. The Board found that Mr. Albano testified that his parents relied on a contractor to place the home on the Property and the difficulty was created by the contractor who placed the home.
16. The Board found that Mr. Albano testified that there is probably a couple of feet from the front property line to the edge of paving of Topher Drive.
17. The Board found that Mr. Albano testified that the septic system was previously located in the rear thereby creating a less buildable area and the home previously could not be turned to fit on the lot due to the septic system.
18. The Board found that Mr. Albano testified that no additions have been made to the existing home.
19. The Board found that no parties appeared in support of or 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 finds 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 as it is only 75 feet wide, which is narrow. The Property is also unique because it was previously improved by a septic system which occupied usable building space in the rear yard. These unique characteristics have resulted in a limited building envelope and have created an exceptional practical difficulty for the Applicant who seeks to retain the dwelling and deck on the Property. The situation is also unique because the builder or its surveyor made a mistake in the construction process. The Applicant constructed the home with her late husband in 1991 and relied on third parties to properly set out the property lines and to place the home and deck on the Property in compliance with the Sussex County Zoning Code only to discover over 25 years later that the home and deck actually encroached into the setback areas. This unique situation has also created an exceptional practical difficulty for the Applicant.
 - b. Due to the uniqueness of the Property, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property is narrow and the building envelope was limited by the placement of a septic system. The home and deck had to be placed closer to the front property line to avoid the septic system. The dwelling and deck were constructed by a builder and the builder made errors in placing the structures. Notably, the side yard encroachments are quite minor. The Applicant seeks permission to retain the dwelling and deck 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 the dwelling and deck to remain on the Property. The Board is convinced that the shape and location of these structures are reasonable, which is confirmed when reviewing the survey provided by the Applicant.
 - c. The exceptional practical difficulty was not created by the Applicant. The Property has a limited building envelope due to its width and the previous septic system. In spite of the unique building envelope, the Applicant relied on the builder to construct the dwelling and deck in compliance with the Sussex County Zoning Code only to later learn (many years later) that an error was made. These unique physical conditions have resulted in a limited building envelope and have created the exceptional practical difficulty for the Applicant.

- 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 dwelling encroaches mere inches into the setback area and it is unlikely that the encroachment would be noticeable without a survey. Notably, no complaint was noted in the record about its location. The deck encroaches farther into the front yard setback but the front property line does not match the edge of paving. There appears to be at least a couple of feet from the front property line to the edge of paving which gives the false impression that the front yard is larger than it actually is. The size of the deck is small and its encroachment into the setback area is also likely not easily noticeable. No complaints were noted about the deck's location either. 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 the existing dwelling and deck on the same footprint. No additions to the 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, 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 as modified.

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, 2012