

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: JEFFREY A. DUERBECK & RUTH L. DUERBECK

(Case No. 12021)

A hearing was held after due notice on September 18, 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 a variance from the side yard setback requirement.

Findings of Fact

The Board found that the Applicants are seeking a variance of two (2) feet from the 7.5 feet side yard setback requirement on the east side for a proposed addition to an existing dwelling. This application pertains to certain real property located on south side of Judson Lane, approximately 960 feet northwest of Seagrass Plantation Lane (911 Address: 30046 Judson Lane, Dagsboro); said property being identified as Sussex County Tax Map Parcel Number 1-34-7.00-704.00.

1. The Board was given copies of the Application, a drawing of the addition, a site plan of the Property, and a portion of the tax map.
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 Jeffrey Duerbeck was sworn in to testify about the Application. Mr. Duerbeck submitted exhibits for the Board to review.
4. The Board found that Mr. Duerbeck testified that the proposal has been submitted to his homeowners association for approval pending the Board's decision on the Application.
5. The Board found that Mr. Duerbeck testified that he has been in contact with neighbors within 200 feet of the Property and they do not object to the project.
6. The Board found that Mr. Duerbeck testified that the addition is in character with other additions that have been built within the community.
7. The Board found that Mr. Duerbeck testified that the addition will be used for additional storage in the garage and for the master bedroom. The garage does not provide much storage space so the addition will improve the usability of the garage.
8. The Board found that Mr. Duerbeck testified that addition is needed to make the home more functional.
9. The Board found that Mr. Duerbeck testified that the Property is unique because it is narrow.
10. The Board found that Mr. Duerbeck testified that the entire community has been developed and there are no vacant lots.
11. The Board found that Mr. Duerbeck testified that the addition will be constructed to match the existing dwelling and will be consistent with other structures in the neighborhood.
12. The Board found that Mr. Duerbeck testified that the variance requested is the minimum variance necessary to afford relief.
13. The Board found that Mr. Duerbeck testified that a smaller addition would not be worth the expense.
14. The Board found that Mr. Duerbeck testified that it is not practical to construct the addition towards the rear of the home due to the layout of the existing home.
15. The Board found that Mr. Duerbeck testified that the Applicants purchased the Property in 2012.

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 clearly unique as it is a small lot. The small size of the Property has created an exceptional practical difficulty for the Applicants. These unique physical conditions have created an unusual and limited building envelope for the Applicants.
 - b. Due to the uniqueness of the Property, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The dwelling was constructed years ago and the Applicants seek to renovate and make an addition to the existing dwelling but are unable to do so without violating the Sussex County Zoning Code. The Board is convinced that the variance is necessary to enable the reasonable use of the Property as the variance will allow a reasonable addition to be constructed on the Property. The Board is convinced that the shape and location of this addition are reasonable, which is confirmed when reviewing the survey provided by the Applicants. The addition will provide the Applicants with much needed storage space.
 - c. The exceptional practical difficulty was not created by the Applicants. The Property is a small lot with a limited building envelope. These unique physical conditions have created the exceptional practical difficulty for the Applicants.
 - d. The variance 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 addition is small and will be constructed to mirror the appearance of the dwelling. The un rebutted testimony confirms that there are other similar additions in the neighborhood as well. Furthermore, no evidence was presented which would indicate that the variance would somehow alter the essential character of the neighborhood or be detrimental to the public welfare.
 - e. The variance sought is the minimum variance necessary to afford relief and the variance requested represents the least modification possible of the regulation at issue. The Applicants have demonstrated that the variance sought will allow the Applicants to make reasonable additions to the existing dwelling and that the size of the addition is the minimum size necessary to afford relief. The addition will provide the Applicants with much needed storage space. The Board also notes that the addition could not be constructed to the rear of the home due to the interior layout of the home.
 - f. The Board's approval is conditioned on the Applicants obtaining approval for the addition from their homeowners association and submitting a copy of the approval to the Board.

The Board granted the variance application with conditions 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 with conditions. 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 with conditions.

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 November 21, 2017