

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

**IN RE: ALEX SADOWSKI & SOHIE SOHN**

**(Case No. 12048)**

A hearing was held after due notice on November 6, 2017. The Board members present were: Mr. Dale Callaway, Ms. Ellen Magee, Mr. John Mills, and Mr. Brent Workman.

Nature of the Proceedings

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

Findings of Fact

The Board found that the Applicants are seeking seek a variance of 2.5 feet from the thirty (30) feet front yard setback requirement for a proposed dwelling, a variance of 14.9 feet from the thirty (30) feet front yard setback requirement for a proposed set of stairs, and a variance of 9.4 feet from the thirty (30) feet front yard setback requirement for a proposed deck. This application pertains to certain real property located on the on the north side of cul-de-sac at the end of Willet Road (911 Address: 39688 Willet Road, Bethany Beach); said property being identified as Sussex County Tax Map Parcel Number 1-34-13.00-1281.00.

1. The Board was given copies of the Application, a survey of the Property dated August 24, 2017, an aerial photograph of the area, and a portion of the tax map of the area.
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 John Sadowski was sworn in to testify about the Application. Jim Fuqua, Esquire, presented the case on behalf of the Applicants and submitted exhibits for the Board to review including the original subdivision plan of Ocean Village, an updated plan for Ocean Village, and building elevation plans for the dwelling.
4. The Board found that Mr. Fuqua stated that the Property is located in the Ocean Village subdivision off a cul-de-sac and the Property is zoned MR.
5. The Board found that Mr. Fuqua stated that the Applicants have owned the Property since 2010. The existing dwelling has been demolished and the Applicants propose to construct a new home on the lot.
6. The Board found that Mr. Fuqua stated that there are several factors which create a unique situation and an exceptional practical difficulty for the Applicants.
7. The Board found that Mr. Fuqua stated that the variances are necessary to enable reasonable use of the Property.
8. The Board found that Mr. Fuqua stated that the Property is irregularly shaped and small. The Property is only 59.79 feet wide and 85.18 feet deep. Other lots in the neighborhood are 102 feet deep.
9. The Board found that Mr. Fuqua stated that Ocean Village is located north of Bethany Beach between Route 1 and the Atlantic Ocean. When the subdivision was created, the subdivision did not include the lands closest to Route 1. A second section of Ocean Village was created in 1987 which subdivided the lands closest to Route 1 and the 1987 subdivision resulted in the creation of several lots at the end of Willet Drive and a hammerhead-shaped cul-de-sac.
10. The Board found that Mr. Fuqua stated that the Property fronts on the cul-de-sac but only a small portion of the cul-de-sac is paved. There is 26 feet of unpaved area between the front of the Property and the edge of paving of the cul-de-sac. This

unpaved area is, for all intents and purposes, considered part of the front yard of the Property.

11. The Board found that Mr. Fuqua stated that there is an easement measuring 10 feet wide along the rear of the Property and the easement starts 7 feet from the rear property line thereby precluding ground-level construction within 17 feet of the rear property line.
12. The Board found that Mr. Fuqua stated that the Property is small and the building envelope, which is already small, is further reduced by the rear yard easement.
13. The Board found that Mr. Fuqua stated that the exceptional practical difficulty was not created by the Applicants.
14. The Board found that Mr. Fuqua stated that the new home will not alter the essential character of the neighborhood.
15. The Board found that Mr. Fuqua stated that the new home is consistent with other homes in the area and the home will not have adverse impact on property values.
16. The Board found that Mr. Fuqua stated that the variances requested are the minimum variances necessary to afford relief.
17. The Board found that Mr. Sadowski affirmed the statements of Mr. Fuqua as true and correct.
18. The Board found that Mr. Fuqua stated that there will be parking underneath the proposed home and sufficient room for parking up to 4 cars on the site.
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 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 as it is an oddly shaped lot located on a hammerhead-shaped cul-de-sac. The unique shape is clearly shown on the survey provided by the Applicants. The Property is also unique because a rear portion of the Property is subject to an existing easement. This easement thereby reduces the already small and uniquely shaped building envelope. The location of the easement is particularly problematic since the easement precludes building ground-level structures in the widest portion of the building envelope. These unique physical conditions have created an exceptional practical difficulty for the Applicants who seek to build a reasonably sized house, deck and stairs.
  - 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 building envelope due to its odd shape and small size and this building envelope is further reduced by the easement. The Applicants seek to build a house, deck and stairs of reasonable size but are unable to do so without violating the Sussex County Zoning Code. The variances are thus necessary to enable reasonable use of the Property as the variances will allow a reasonably sized house, deck and stairs to be constructed 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 Applicants.
  - c. The exceptional practical difficulty was not created by the Applicants. The Applicants did not create the unique size and shape of the lot which have resulted in a limited building envelope on the Property. These conditions were created when the lots were subdivided in 1987 and the Applicants only acquired the Property in 2010. The Property is also subject to the aforementioned easement. The unique characteristics of the Property are

clear from the record and the survey. The Board is convinced that the exceptional practical difficulty was not created by the Applicants but was created by the lot's unique characteristics.

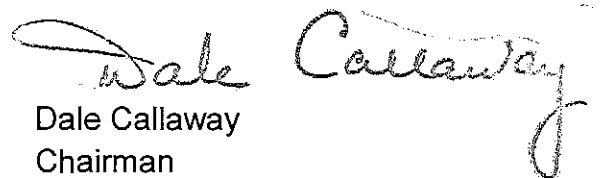
- d. The variances will not alter the essential character of the neighborhood nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare. The Board is convinced that the house, deck and stairs will have no effect on the character of the neighborhood. These structures will be similar to other structures in the neighborhood and will be located a similar distance from the paved portion of Willet Road as other nearby structures. The Board notes that the front property line is approximately 26 feet from the edge of paving of Willet Road thereby making the front of the Property appear larger than it actually is. This condition should minimize the impact of the front yard encroachment. Even with the front yard encroachment, the Property will still offer on-site parking for up to 4 vehicles. 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 regulation at issue. The Applicants have demonstrated that the variances sought will allow the Applicants to build a reasonably sized house, deck and stairs on the Property which can be reasonably used by the Applicants.

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, and Mr. Brent Workman. No Board Member voted against the Motion to approve the variance application. Mr. Bruce Mears did not participate in the discussion or vote of this 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 January 9, 2018.