

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: ROBERT JOSEPH FREY & GINA DRAGO FREY

(Case No. 12068)

A hearing was held after due notice on December 18, 2017. The Board members present were: Mr. Dale Callaway, Ms. Ellen Magee, Mr. Bruce Mears, Mr. John Mills, and Mr. Brent Workman.

Nature of the Proceedings

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

Findings of Fact

The Board found that the Applicants are seeking a variance of 5.4 feet from the thirty (30) feet front yard setback requirement for an existing set of stairs. This application pertains to certain real property located on the south side of Water Walk Way, at the intersection of Water Walk Way and Nature Walk Way (911 Address: 38035 Water Walk Way, Selbyville); said property being identified as Sussex County Tax Map Parcel Number 5-33-19.00-1346.00.

1. The Board was given copies of the Application, a survey of the Property dated August 5, 2017, letters in support of the Application, an aerial photograph of the Property, and a portion of the tax map of the area.
2. The Board found that the Office of Planning & Zoning received four (4) letters in support of the Application and no correspondence in opposition to the Application.
3. The Board found that Gina Frey and Robert Frey were sworn in to testify about the Application. The Applicants submitted a site and grading plan for the Board to review.
4. The Board found that Mr. Frey testified that the Property is unique due to its pie-shape and that the Property is narrow. There is a bio-swale on the east side of the Property and the Property is subject to a wetland buffer of fifty (50) feet in the rear yard. The bio-swale has a steep slope.
5. The Board found that Mr. Frey testified that these conditions limit the Property's building envelope.
6. The Board found that Mr. Frey testified that the Applicants explored options to construct a home on the Property within the building envelope and reviewed multiple different blueprints.
7. The Board found that Mr. Frey testified that the variance will not alter the essential character of the neighborhood.
8. The Board found that Mr. Frey testified that the homes in the neighborhood are three (3) stories tall with entrances on the second floor and the Applicant's dwelling has a second story entrance.
9. The Board found that Mr. Frey testified that the variance requested is the minimum variance necessary to afford relief.
10. The Board found that Mr. Frey testified that the house has been constructed and the stairs are already in place. The house is located on pilings and the stairs go to the second-floor entrance.
11. The Board found that Mr. Frey testified that neighboring homes have similar stairs.
12. The Board found that Mr. Frey testified that the original drawings showed that the stairs would extend five (5) feet from the building envelope and would comply with the Sussex County Zoning Code.
13. The Board found that Mr. Frey testified that the footings were pinned.

14. The Board found that Mr. Frey testified that the house was placed as far west and south as possible while not encroaching on the bio-swale or the wetland buffer area.
15. The Board found that Mr. Frey testified that the first floor is used for a garage, mechanical room, bedroom, and recreation room.
16. The Board found that Mr. Frey testified that the homeowners association requires that homes consist of at least 2,400 square feet.
17. The Board found that Mr. Frey testified that the garage slab was raised to minimize the slope and the grade of the driveway was also minimized.
18. The Board found that Mrs. Frey testified that there is an interior staircase as well.
19. The Board found that Mr. Frey testified that the stairs lead straight out from the house rather than turn because space was needed for cars to be able to access the garage. The stairs also lead to a walkway.
20. The Board found that no parties appeared in support of or in opposition to the Application
21. 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 oddly shaped with a narrow rear yard and a bio-swale drainage easement along the east side of the Property. The drainage easement limits the building envelope and the building envelope is further limited by the tidal wetland easement in the rear of the lot. These conditions greatly limit the buildable area of the Property. The unique conditions are clearly shown on the survey provided by the Applicants and these unique physical conditions have created an exceptional practical difficulty for the Applicants who seek to retain reasonably sized stairs to the home.
 - 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 this building envelope is further limited by the bio-swale drainage easement and the wetlands easement which take up significant portions of the building envelope. The Applicants were able to design a home to fit in the building envelope while meeting the homeowner association requirements but were unable to construct stairs to the home within without violating the Sussex County Zoning Code. The variance is thus necessary to enable reasonable use of the Property as the variance will allow a reasonably sized set of stairs to remain on the Property. The Board is convinced that the shape and location of these stairs are reasonable, which is confirmed when reviewing the survey provided by the Applicants. The Board also notes that the location of the stairs also provides the Applicants with unobstructed access to their garage.
 - c. The exceptional practical difficulty was not created by the Applicants. Rather, the exceptional practical difficulty was created by the Property's unique shape, the drainage easement, and the wetlands easement which have resulted in a limited building envelope on the Property. 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 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 Board is

convinced that the stairs will have no effect on the character of the neighborhood. Based on the record, the stairs are similar to other stairs to other homes in the neighborhood. Neighbors have also indicated to the Applicants their support of the Application. Importantly, 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 retain a reasonably sized set of stairs on the Property which can be reasonably used by the Applicants. The stairs will provide safe access to the home and will not obstruct access to the garage located underneath the home. The Board is convinced that the Applicants explored other means by which to construct the stairs and the dwelling but were greatly constrained by the Property's unique characteristics.

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. Bruce Mears, Mr. John Mills, and Mr. Brent Workman. No Board Member 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 February 20, 2018.