

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

**IN RE: DAVID SROKA & CINDY SROKA**

**(Case No. 12070)**

A hearing was held after due notice on January 8, 2018. The Board members present were: Mr. Dale Callaway, Ms. Ellen Magee, Mr. Bruce Mears, 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 are seeking a variance of 10.0 feet from the twenty (20) feet rear yard setback requirement for a proposed dwelling with a covered deck, a variance of 6.0 feet from the ten (10) feet side yard setback requirement on the northeast side for a proposed dwelling with a covered deck, a variance of 6.0 feet from the ten (10) feet side yard setback requirement on the southwest side for a proposed dwelling with a covered deck, and a variance of 10.0 feet from the thirty (30) feet front yard setback requirement for a proposed dwelling. This application pertains to certain real property located on the northwest side of Seagrass Court, approximately 250 feet southwest of the intersection of Seagrass Court and Sandpiper Way. (911 Address: 29737 Seagrass Court, Dagsboro); said property being identified as Sussex County Tax Map Parcel Number 1-34-7.00-108.00.

1. The Board was given copies of the Application, a survey of the Property dated August 21, 2015, pictures of nearby properties, 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 one (1) letter in support of the Application and one (1) letter in opposition to the Application.
3. The Board found that David Sroka was sworn in to testify about the Application and submitted exhibits for the Board to review including five (5) letters in support of the Application.
4. The Board found that Mr. Sroka testified that the Applicants propose to construct a dwelling on the Property.
5. The Board found that Mr. Sroka testified that the Property measures 40 feet wide by approximately 102 feet deep.
6. The Board found that Mr. Sroka testified that the Property is narrow and the narrowness makes it impossible to construct a dwelling on the Property in compliance with the Sussex County Zoning Code.
7. The Board found that Mr. Sroka testified that the proposed dwelling will be placed on pilings and will be similar to other homes in the neighborhood. There are five (5) similar homes on nearby lots.
8. The Board found that Mr. Sroka testified that the dwelling will not alter the essential character of the neighborhood and the dwelling will enhance the neighborhood.
9. The Board found that Mr. Sroka testified that the variances requested are the minimum variances necessary to afford relief.
10. The Board found that Mr. Sroka testified that Seagrass Plantation homeowners association owns an adjacent lot which is used for a fishing pier and kayak access.
11. The Board found that Mr. Sroka testified that the Applicants recently replaced the bulkhead and raised it. The Property also has a pier and boat lift.
12. The Board found that Mr. Sroka testified that he purchased the Property in 2015 and he did not use a realtor when purchasing the lot.

13. The Board found that Mr. Sroka testified that lots in the neighborhood range from 30 feet to 50 feet wide.
14. The Board found that Mr. Sroka testified that the lots with similar sized dwellings to the proposed dwelling are larger lots than the Property and are located in Seagrass Plantations.
15. The Board found that Mr. Sroka testified that the home on Lot 101 is similar to the proposed dwelling.
16. The Board found that Mr. Sroka testified that there was a dwelling previously on the Property and the previous home can be seen on the picture with the water skier. The previous house was a large, Cape Code style home which filled the lot. The home was removed by a prior owner.
17. The Board found that Mr. Sroka testified that the deck will be elevated. Stairs will be located within the footprint of the proposed deck. No stairs will project into the side yard or front yard. The HVAC system will be elevated but will be located below the deck.
18. The Board found that Mr. Sroka testified that there would be parking for up to 2 cars under the home. The Property will have other parking spaces as well.
19. The Board found that Mr. Sroka testified that he was unable to find a home that would fit within the building envelope
20. The Board found that one (1) party appeared in support of the Application.
21. The Board found that no parties appeared in opposition to the Application.
22. The Board tabled its discussion on the Application until February 5, 2018, at which time the Board discussed and voted on the Application. Board Member John Mills participated in the discussion as he previously reviewed the record and transcript of the Application.
23. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, which the Board 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. The Property is quite small and is located adjacent to Indian River as evidenced by the survey. The Property is only 40 feet wide by 103.15 feet deep and consists of only 4,110 square feet. The unique characteristics of this Property limit the buildable area available to the Applicants and have created an exceptional practical difficulty for the Applicants who seek to build a dwelling on the lot.
  - 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 build a dwelling and deck 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 dwelling and deck to be constructed on the Property. The Board is convinced that the shape and location of the dwelling and deck are also 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 Applicants only recently acquired the Property. 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. 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.

- 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 dwelling will have no effect on the character of the neighborhood. The proposed dwelling is similar to other homes in the neighborhood and several neighbors submitted letters supporting the Application. The only opposition was from the neighboring Seagrass Plantation homeowners association who owns an adjacent parcel used for water access. This letter of opposition is ironic since the Applicants proposed home is similar to homes located in the Seagrass Plantation community. The Board was not convinced by the homeowners association that the variances would somehow alter the essential character of the neighborhood. Rather, the Board finds that the variances will allow the Applicants to construct a dwelling that is consistent with the neighborhood.
- 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 construct a reasonably sized dwelling and deck on the Property. The Board is convinced that the Applicants explored other options for the dwelling and deck but were unable to fit them on the lot within the building envelope.

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 March 20, 2018