

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY
IN RE: MARK F. ROSENBERG & SANDRA BACOME-ROSENBERG
(Case No. 12087)

A hearing was held after due notice on January 22, 2018. The Board members present were: Mr. Dale Callaway, Ms. Ellen Magee, Mr. Bruce Mears, and Mr. John Mills.

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 8.4 feet from the twenty (20) feet rear yard setback requirement for existing steps, a variance of 8.2 feet from the twenty (20) feet rear yard setback requirement for existing steps, a variance of 9.6 feet from the ten (10) feet side yard setback requirement on the west side for existing steps, a variance of 9.7 feet from the ten (10) feet side yard setback requirement on the west side for existing steps, a variance of 9.9 feet from the ten (10) feet side yard setback requirement on the west side for existing steps, a variance of 9.6 feet from the ten (10) feet side yard setback requirement on the west side for existing steps, a variance of 4.4 feet from the five (5) feet front yard setback requirement for an existing shed, and a variance of 4.5 feet from the five (5) feet front yard setback requirement for an existing shed. This application pertains to certain real property located on the east side of Grant Drive, approximately 315 feet south of the intersection of Grant Drive and Lincoln Drive. (911 Address: 38737 Grant Avenue, Selbyville); said property being identified as Sussex County Tax Map Parcel Number 5-33-20.14-28.00.

1. The Board was given copies of the Application, a survey of the Property dated June 29, 2017, a deed to the Property, Findings of Fact for Case Nos. 6723 and 6848, a survey of the Property dated March 10, 1999, assessment information, 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 no correspondence in support of or in opposition to the Application.
3. The Board found that Mark Rosenberg was sworn in to testify about the Application. Raymond Tomasetti, Esquire, presented the case on behalf of the Applicants and presented exhibits for the Board to review.
4. The Board found that Mr. Tomasetti stated that variances were approved in 1998 and 1999 for the Property because the existing dwelling violated the setback requirements but the survey submitted for the previous variance applications failed to show the location of the steps to the home.
5. The Board found that Mr. Tomasetti stated that the shed was on the Property when the prior owner acquired the Property. The shed was not shown on the 1998 survey nor was a building permit issued for it.
6. The Board found that Mr. Tomasetti stated that the steps and the shed have been on the Property for at least eight (8) years since they were on the Property when the prior owners (the Kellys) acquired the lot.
7. The Board found that Mr. Tomasetti stated that other lots along Grant Avenue have sheds which are similarly situated.
8. The Board found that Mr. Tomasetti stated that the variances are requested to allow the stairs and shed to remain in their present location.
9. The Board found that Mr. Tomasetti stated that the Property is unique because it is only 50 feet wide by 88.75 feet deep.

10. The Board found that Mr. Tomasetti stated that the dwelling was placed on the Property by a prior owner.
11. The Board found that Mr. Tomasetti stated that the Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code.
12. The Board found that Mr. Tomasetti stated that the steps are necessary for the Applicants to access the home.
13. The Board found that Mr. Tomasetti stated that the exceptional practical difficulty was not created by the Applicants.
14. The Board found that Mr. Tomasetti stated that the variances will not alter the essential character of the neighborhood.
15. The Board found that Mr. Tomasetti stated that the variances are minimum variances necessary to afford relief.
16. The Board found that Mr. Rosenberg affirmed the statements made by Mr. Tomasetti as being true and correct.
17. The Board found that Mr. Tomasetti stated that the previous owners were unaware of the encroachments because they did not obtain a survey when they purchased the Property. The Applicants became aware of the encroachments when they obtained a survey as part of the settlement process.
18. The Board found that Mr. Tomasetti stated that the shed cannot be relocated elsewhere on the Property.
19. The Board found that Mr. Rosenberg testified that the shed is similar to other sheds in the neighborhood.
20. The Board found that Mr. Tomasetti stated that he has received no complaints from neighbors.
21. The Board found that Mr. Tomasetti stated that Grant Avenue does not extend to the front property line.
22. The Board found that no parties appeared in support of or in opposition to 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 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 due to its size. The Property is quite small and is located adjacent to a lagoon as evidenced by the survey. The Property is only 50 feet wide by 88.75 feet deep and consists of less than 4,500 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 retain steps and a shed on the lot. The Board notes that variances were previously granted for the existing dwelling the Property.
 - 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 retain steps and a shed 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 reasonably sized steps and shed to remain on the Property. The Board is convinced that the shape and location of these structures are also reasonable, which is confirmed when reviewing the survey provided by the Applicants. The steps are needed for the Applicants to access the home and the shed is needed for storage.
 - c. The exceptional practical difficulty was not created by the Applicants. The Applicants did not create the unusual size of the Property. Cape Windsor

was originally developed as a community for smaller, singlewide manufactured homes with small lot sizes. 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. The Board also notes that the structures were placed on the Property by a prior owner.

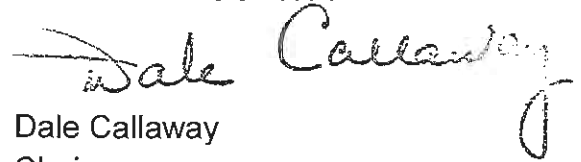
- d. The variances will not alter the essential character of the neighborhood nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare. The Board is convinced that the structures will have no effect on the character of the neighborhood. The structures have been on the Property for many years and no complaints were noted in the record about these structures. Furthermore, the Applicants submitted photographs demonstrating that the shed is similar to other sheds in the neighborhood and is located in a similar location to neighboring sheds. No evidence was presented that the variances would somehow alter the essential character of 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 retain these structures on the Property. No additions or modifications to those 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. Bruce Mears, and Mr. John Mills. No Board Member voted against the Motion to approve the variance application. Mr. Brent Workman did not participate in the discussion or vote on 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 March 6, 2018.