

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

**IN RE: JOHN W. RAUBER, JR., & DIANE BOYD RAUBER**

**(Case No. 12102)**

A hearing was held after due notice on February 19, 2018. The Board members present were: Mr. Dale Callaway, Mr. Bruce Mears, Mr. John Mills, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for variances from the side yard and rear yard setback requirements.

Findings of Fact

The Board found that the Applicants are seeking a variance of 0.4 feet from the ten (10) feet side yard setback requirement on the west side for an existing porch, a variance of 0.5 feet from the ten (10) feet side yard setback requirement on the west side for an existing dwelling, a variance of 2.4 feet from the twenty (20) feet rear yard setback requirement for existing steps, a variance of 2.3 feet from the twenty (20) feet rear yard setback requirement for an existing outdoor shower, and a variance of 1.6 feet from the ten (10) feet side yard setback requirement on the east side for an existing carport. This application pertains to certain real property located on the south side of Bayberry Lane, approximately 141 feet northeast of the intersection of Anchor Road and Bayberry Lane. (911 Address: 21 Bayberry Lane, Rehoboth Beach); said property being identified as Sussex County Tax Map Parcel Number: 3-34-8.17-86.00.

1. The Board was given copies of the Application, a survey of the Property dated September 12, 2017, pictures of the Property, building permit applications, 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 no correspondence in opposition to the Application.
3. The Board found that Diane Boyd Rauber was sworn in to testify about the Application. William Schab, Esquire, presented the case on behalf of the Applicants.
4. The Board found that Mr. Schab stated that the Applicants acquired the Property in September 2017. The Applicants obtained a survey prior to settlement and discovered the encroachments.
5. The Board found that Mr. Schab stated that the Property is trapezoidal in shape.
6. The Board found that Mr. Schab stated that the west side of the home encroaches into the side yard setback area by inches and the dwelling cannot be brought into compliance with the Sussex County Zoning Code.
7. The Board found that Mr. Schab stated that the carport, which is a normal sized carport, on the east side of the Property encroaches into the side yard setback area. The front part of the carport meets the setback requirements but the rear portion of the carport does not.
8. The Board found that Mr. Schab stated that the side property line on the east side is angled and that angle has led to the carport's encroachment.
9. The Board found that Mr. Schab stated that these structures were placed on the Property by a prior owner and the homeowners association indicated that the structures have been on the Property for many years.
10. The Board found that Mr. Schab stated that the variances will not alter the essential character of the neighborhood.
11. The Board found that Mr. Schab stated that the Applicants do not seek to expand any of the structures.

12. The Board found that Ms. Rauber affirmed the statements made by Mr. Schab as true and correct.
13. The Board found that Ms. Rauber testified that she cannot bring the structures into compliance with the Sussex County Zoning Code and these structures were constructed in 1991.
14. The Board found that Ms. Rauber testified that the Applicants have not received any complaints from neighbors.
15. The Board found that no parties appeared in support of or in opposition to the Application
16. 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 unrebutted, 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 situation is clearly unique as the Applicants recently acquired the Property only to find out that structures which appear to have been on the Property for many years do not comply with the setback requirements. The Property is unique because it is a small lot with angled side property lines. Due to these angled lines, the rear of the lot is approximately 10% narrower than the front of the Property and the Property has a small, unusually shaped building envelope. These unique conditions have created an exceptional practical difficulty for the Applicants.
  - b. Due to the uniqueness of the Property and situation, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The structures were constructed years ago and the Applicants seek to retain the structures on the Property 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 the structures to remain 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. The structures cannot be moved into compliance and are necessary for Applicants' use of the Property.
  - c. The exceptional practical difficulty was not created by the Applicants. The Applicants did not develop the Property and the existing physical conditions of the Property have created a unique situation. Specifically, the lot is small and has an oddly shaped building envelope. These conditions pre-existed the Applicants' acquisition of the Property.
  - 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 structures have been on the Property for many years without recorded complaints. Despite the longstanding location of the structures and notification to neighbors, no complaints were noted in the record about their location. Rather, the Board received a letter of support from the homeowners association. Furthermore, 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. The Board also notes that two of the variances are for less than 1 foot and it is unlikely that those encroachments would even be noticeable without a survey.
  - 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 the existing structures

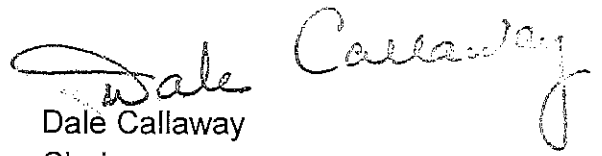
on the same footprint. No additions or modifications to the structures are sought or planned.

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, Mr. Bruce Mears, Mr. John Mills, and Mr. Brent Workman. No Board Member voted against the Motion to approve the variance application. Ms. Ellen Magee 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 two (2) years from the date below the application becomes void.

Date April 17, 2018