

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: BEVERLY HOGATE

(Case No. 12115)

A hearing was held after due notice on April 9, 2018. 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 variances from the rear yard and side yard setback requirements.

Findings of Fact

The Board found that the Applicant is seeking a variance of 3.7 feet from the five (5) feet side yard setback requirement on the north side for an existing HVAC system with 2 units and a variance of 4.0 feet from the five (5) feet side yard setback requirement on the north side for existing steps. The Applicant initially also sought variances for an expansion of an existing deck but no variances were needed for those additions due to recent changes to the Sussex County Zoning Code. This application pertains to certain real property located on the east side of Roosevelt Avenue, approximately 1,420 feet south of Lincoln Drive (911 Address: 38835 Roosevelt Avenue, Selbyville); said property being identified as Sussex County Tax Map Parcel Number 5-33-20.18-9.00.

1. The Board was given copies of the Application, a letter from the Applicant, a letter from the Cape Windsor Community Association, Inc., a drawing of the proposed deck, an aerial photograph of the Property, a survey of the Property dated December 16, 2005, assessment information, pictures, copies of the minutes for Case No. 9417, a memorandum from staff, 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 Beverly Hogate was sworn in to testify about the Application.
4. The Board found that Ms. Hogate testified that the steps and HVAC system have been on the Property since the dwelling was built 12 years ago. The Applicant received a variance for the dwelling and she relied on her builders, Beracah Homes and Iachetta Builders, to construct the home in compliance with the Code.
5. The Board found that Ms. Hogate testified that neighbors have HVAC systems and side steps on the north side of their lots as well. The steps serve as an emergency exit and are rarely used.
6. The Board found that Ms. Hogate testified that the lots in the neighborhood are narrow.
7. The Board found that Ms. Hogate testified that the Property cannot otherwise be developed in strict conformity with the Code.
8. The Board found that Ms. Hogate testified that the exceptional practical difficulty was not created by the Applicant.
9. The Board found that Ms. Hogate testified that the variances will not alter the essential character of the neighborhood and that the variances requested are the minimum variances necessary to afford relief.
10. The Board found that Ms. Hogate testified that she learned of the need for the variances when her builder applied for a building permit to expand the deck.
11. The Board found that Ms. Hogate testified that she relied on a professional to build the stairs and the HVAC system.

12. The Board found that Ms. Hogate testified that she moved into the dwelling in June 2006.
13. The Board found that Ms. Hogate testified that she has owned the Property since the 1970s and the existing dwelling was built on the same footprint as the prior dwelling on the Property.
14. The Board found that Ms. Hogate testified that she has received no complaints about the structures and that her neighbor has indicated support of the Application.
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 Property is clearly unique as it is a small and narrow lot. The Property is fifty (50) feet wide and consists of only 4,820 square feet; as is clearly shown on the survey. These unique physical conditions have created an exceptional practical difficulty for the Applicant by creating an unusual and limited building envelope for the Applicant. The exceptional practical difficulty was exacerbated by the fact that the Applicant relied on a builder to construct the dwelling and related structures in strict conformity with the Sussex County Zoning Code.
 - b. Due to the uniqueness of the Property, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property was created many years ago as part of a mobile home park. The Applicant seeks to retain the steps and HVAC system on the Property but is 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 steps and HVAC system to remain on the Property. The Board is convinced that the size, shape, and location of these structures are reasonable, which is confirmed when reviewing the survey and pictures provided by the Applicant.
 - c. The exceptional practical difficulty was not created by the Applicant. The Property was created and developed many years ago and is a narrow and undersized lot. The Board notes that the narrowness of the lot greatly limits the building envelope. The Applicant did not create the size and shape of the lot. Rather, those conditions pre-existed the Applicant's acquisition of the Property. Ultimately, these unique physical conditions have resulted in a limited building envelope and have created the exceptional practical difficulty for the Applicant. The Board also notes that the Applicant did not place these structures on the Property. Those structures were placed on the lot by contractors whom the Applicant relied upon only for the Applicant to later discover the error.
 - 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 steps and HVAC system have been on the Property for nearly twelve (12) years and, despite their longstanding location and notice to neighbors, 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. This lack of evidence is telling since the Board would expect some evidence if the structures had altered the essential character of the neighborhood. The Board notes that the pictures indicate that other structures in the neighborhood are similarly situated and the Applicant has

received no complaints about the placement of the steps and HVAC system. The steps are also rarely used by the Applicant.

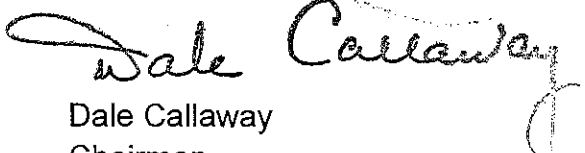
- e. The variances sought are the minimum variances necessary to afford relief and the variances requested represent the least modifications possible of the regulations at issue. The Applicant has demonstrated that the variances sought will allow the Applicant to retain reasonably sized steps and HVAC system on the lot and those structures are consistent with the neighborhood. 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, 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 two (2) year from the date below the application becomes void.

Date May 22, 2018