

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

**IN RE: DONALD DZEDZY & MARGARET DZEDZY**

**(Case No. 12118)**

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 front yard and side yard setback requirements.

Findings of Fact

The Board found that the Applicants are seeking a variance of 10.0 feet from the thirty (30) feet front yard setback requirement and variances of 2.0 feet from the five (5) feet side yard setback requirements on both sides of the Property for a proposed dwelling. This application pertains to certain real property located on the north side of Seagrass Court, approximately 641 feet west of Seagrass Plantation Lane (911 Address 29766 Seagrass Court, Dagsboro); said property being identified as Sussex County Tax Map Parcel Number 1-34-7.00-101.00.

1. The Board was given copies of the Application, an aerial photograph of the Property, a survey of the Property dated November 21, 2017, photographs of the Property, building plans, elevation certificates, Findings of Fact and the Application for Case No. 11863, 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 and one (1) letter in opposition to the Application.
3. The Board found that Donald Dzedzy was sworn in to testify about the Application.
4. The Board found that Mr. Dzedzy testified that he owns the Property and the adjacent property. The Property was willed to three daughters in 2014 and, in 2016, the prior owners placed the Property for sale and obtained a variance from the side yard setback requirement for a proposed dwelling. He purchased the Property in July 2017 and removed the existing dwelling and shed, which were in poor condition. The Board granted an extension of the variance approval for an additional year.
5. The Board found that Mr. Dzedzy testified that the proposed dwelling will be moved closer to the front yard to provide neighboring properties with better views of the water.
6. The Board found that Mr. Dzedzy testified that he intends to invert the front yard and the rear yard so that the dwelling is closer to the front yard property line and farther from the rear yard property line.
7. The Board found that Mr. Dzedzy testified that his dwelling on the neighboring lot is 19.3 feet from the front property line and he obtained a variance for that dwelling.
8. The Board found that Mr. Dzedzy testified that, when the community was developed, it was assumed that the street was the rear yard and the water was the front yard.
9. The Board found that Mr. Dzedzy testified that a conceptual drawing of the proposed dwelling does not match up with the survey and leaves a discrepancy of 8 inches. The prior owners who obtained the variance did not obtain a true survey.
10. The Board found that Mr. Dzedzy testified that the dwelling will be 28 feet wide and will be consistent with other dwellings in the neighborhood. The dwelling will consist of approximately 2,900 square feet and other homes in the neighborhood

- consist of approximately 3,000 square feet. The previously approved dwelling consisted of approximately 1,500 square feet.
11. The Board found that Mr. Dzedzy testified that the Property is narrow.
  12. The Board found that Mr. Dzedzy testified that the dwelling will be consistent with the front yard setback to the house to the southwest and with the rear yard setback of the house to the northeast.
  13. The Board found that Mr. Dzedzy testified that the previously granted variance does not provide enough space for the proposed dwelling.
  14. The Board found that Mr. Dzedzy testified that the dwelling will be an asset to the neighborhood.
  15. The Board found that Mr. Dzedzy testified that the home will be located on pilings and vehicles will be parked underneath the home.
  16. The Board found that Mr. Dzedzy testified that there is 2 feet from the edge of paving of Seagrass Court and the front property line.
  17. The Board found that Mr. Dzedzy testified that all steps and HVAC systems will fit within the building envelope and no variances will be needed for those structures.
  18. The Board found that Dean Campbell, Esquire, was sworn in to testify about the Application.
  19. The Board found that Mr. Campbell testified that he is appearing on behalf of the Hargrave family and his clients do not oppose the front yard variance request but they oppose the side yard variance requests.
  20. The Board found that Mr. Campbell testified that the previous dwelling on the Property was built in the 1960s and there are small cottages in the neighborhood.
  21. The Board found that Mr. Campbell testified that the Applicants have created the difficulty and the Applicants were aware of the narrowness of the Property when they purchased the Property.
  22. The Board found that Mr. Campbell testified that his clients' lot is narrower than the Property.
  23. The Board found that Mr. Campbell testified that the proposed dwelling will be too close to the Hargraves' property line.
  24. The Board found that Mr. Campbell testified that he does not think the Applicants have met the standards and that the variance requests are not the minimum variances necessary to afford relief.
  25. The Board found that Mr. Campbell testified that the proposed dwelling is nearly double the size of the previously approved dwelling.
  26. The Board found that Mr. Dzedzy testified that the proposed dwelling will be 27.5 feet wide.
  27. The Board found that Mr. Dzedzy testified that the previously approved house was 1.5 stories tall and the proposed dwelling will be taller.
  28. The Board found that Mr. Dzedzy testified that prices of homes on the water have skyrocketed and the economics do not work for smaller homes on the water. He believes that it would be difficult to build a house that would economically work on the Property.
  29. The Board found that Mr. Dzedzy testified that he bought the Property with the impression that the previously approved variance would allow him to build a dwelling.
  30. The Board found that Mr. Dzedzy testified that he will have look for new plans if the variance is denied.
  31. The Board found that Mr. Dzedzy testified that he intends to sell the Property.
  32. The Board found that Mr. Dzedzy testified that the Property is wider in the front yard than the rear yard.
  33. The Board found that Mr. Dzedzy testified that he bought the Property with the intent of developing it in such a fashion so as not to impede his view and the view from the Hargroves' property.

34. The Board found that Mr. Dzedzy testified that, if he sells the Property, he intends to put a deed restriction to prohibit construction within 30 feet of the bulkhead.
35. The Board found that Mr. Dzedzy testified that he proposes to build the dwelling 3 feet from the side property lines and the dwelling will be 30 feet from the rear property line and 20 feet from the front property line.
36. The Board found that Mr. Dzedzy testified that his neighboring lot is 72 feet wide.
37. The Board found that Mr. Dzedzy testified that the Property was originally part of Lot 102 and those lots were subdivided in the 1960s.
38. The Board found that no parties appeared in support of the Application.
39. The Board found that one (1) party appeared in opposition to the Application.
40. The Board tabled its discussion and vote on the Application until May 7, 2018.
41. 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 for a side yard variance on the southwest side and for a front yard variance met the standards for granting a variance. The findings below further support the Board's decision to approve those variances.
  - a. The Property is clearly unique as it is a small, narrow lot as is clearly shown on the survey provided by the Applicants. The Applicants plan to build a home on pilings but are unable to do so while meeting the setback requirements. The Property is exceptionally narrow as it is only 33.60 feet wide in the rear and only slightly wider in the front yard. The narrowness of the Property has clearly created an exceptional practical difficulty for the Applicants and this difficulty is exacerbated since the Property is located in a flood zone. Accordingly, the dwelling needs to be elevated. These unique physical conditions have created an unusual and limited building envelope for the Applicants.
  - b. Due to the uniqueness of the Property, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Applicants seek to build a home on the Property but are unable to do so without violating the Sussex County Zoning Code. The Board is convinced that a front yard variance and a side yard variance are necessary to enable the reasonable use of the Property as those variances will allow a reasonably sized dwelling to be constructed on the Property. The front yard variance is necessary for two reasons. First, the front yard variance will allow the Applicants to build the home farther away from the water in the rear yard thereby providing a larger buffer from potential flooding issues. Second, the front yard is wider than the rear yard. By obtaining a front yard variance, the Applicants will be able to move the dwelling closer to the front property line and thereby have more room in the building envelope to build the dwelling. While the front yard variance will provide the Applicants with some relief, additional relief is needed from the side yard setback requirement as well. In order to build a dwelling which would otherwise meet the side yard setback requirements, the Applicants would have to build a home that is approximately 23 feet wide, which is a narrow home – particularly since the home would have to be elevated to meet flood zone requirements thereby using some of the footprint of the home for stairs. A variance is, thus, necessary to afford the Applicants with relief. The Board finds, however, that a side yard variance on both sides of the Property is not necessary to enable reasonable use of the Property. The Applicants failed to demonstrate how a home that would be 26 feet wide could not be constructed. As noted by the opposition, there are smaller homes in the neighborhood and the proposed home is approximately twice the size of a previously approved proposed home on the Property. The Board is convinced that a side yard variance is necessary to enable the reasonable

use of the Property as a side yard variance will allow the Applicant to construct a reasonably sized home but the Board is not convinced that a side yard variance is needed on both sides of the Property. The Applicants' request for a variance on both sides of the Property appears to be a "want" rather than a "need." As such, the Board approves a variance of 2 feet from the 5 feet side yard setback requirement on the southwest side of the Property but the Board does not approve a variance from the side yard setback requirement on the northeast side of the Property.

- c. The exceptional practical difficulty was not created by the Applicants. The Property is an exceptionally narrow lot in a flood zone. The narrowness of the Property greatly limits the building envelope of the lot. The building envelope is further limited by the flood zone requirements which necessitate that the home be elevated. It is clear to the Board that these unique physical conditions have resulted in a limited building envelope and have created the exceptional practical difficulty for the Applicants.
- d. The variances, as approved, 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 dwelling will replace an existing dwelling on the Property which has been demolished. A new dwelling will likely improve the character of the neighborhood and the new dwelling will be raised to meet flood zone requirements. At issue, however, is whether the side yard variances will alter the essential character of the neighborhood or substantially or permanently impair the appropriate use or development of adjacent property, or be detrimental to the public welfare. The neighbors to the northeast of the Property opposed the side yard variance request on the northeast side and they provided convincing evidence that a side yard variance on the northeast side would render the home too close to their property. The Board finds the neighbors' concerns reasonable and justified. If the variance on that side of the Property was granted, the Applicants could build a large home within 2 feet of the opposition's property. The opposition's lot is only 30 feet wide, which is even narrower than the Property, and the opposition's lot is improved by a small cottage. The close proximity of a large home to the opposition's small cottage and lot would unnecessarily burden their property. That being said, the variance on the southwest side of the Property poses less concern to the Board. The lot to the southwest of the Property is a larger lot more than double the size of the Property and is owned by the Applicants and they do not object to the side yard variance request on that side. Lastly, no evidence was presented which would indicate that the front yard variance would somehow alter the essential character of the neighborhood or be detrimental to the public welfare. Rather, the neighbors in opposition to the northeast side yard variance request did not object to the front yard variance request.
- e. The side yard variance on the southwest side of the Property and the front yard variance request sought by the Applicants are the minimum variances necessary to afford relief and those variances represent the least modifications possible of the regulations at issue. The Board finds that these variances will provide the Applicants with a reasonable building envelope from which to build a dwelling that will be elevated to avoid flooding problems. The Board finds that a variance on the northeast side of the Property is not, however, the minimum variance necessary to afford relief for the reasons stated above.

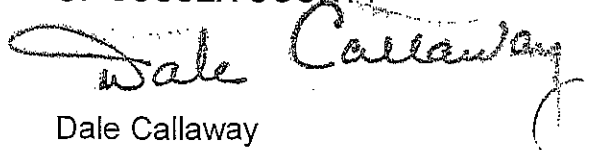
- f. The Board approves a variance of 2 feet from the 5 feet side yard setback requirement on the southwest side and a variance of 10 feet from the 30 feet front yard setback requirement for a proposed dwelling.
- g. The Board denies a variance of 2 feet from the 5 feet side yard setback requirement on the northeast side for a proposed dwelling.

The Board granted the variance application in part finding that it met the standards for granting a variance and the Board denied the variance application in part finding that it did not meet the standards for granting a variance.

Decision of the Board

Upon motion duly made and seconded, the variance application was approved in part and denied in part. The Board Members in favor of the motion were Mr. Dale Callaway, Ms. Ellen Magee, Mr. Bruce Mears, and Mr. Brent Workman. Mr. John Mills voted against the Motion to approve the variance application in part and to deny the variance application in part.

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 July 10, 2018.