

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: STUART W. FERGUSON & ROCHELLE M. FERGUSON

(Case No. 12182)

A hearing was held after due notice on September 17, 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 a variance from the front yard setback requirement for existing structures.

Findings of Fact

The Board found that the Applicants are seeking a variance of 5.8 feet from the twenty-five (25) feet front yard setback requirement for the existing steps. This application pertains to certain real property on the east side of William F. Street, approximately 533 feet northeast of Coastal Highway (Route 1) (911 Address: 38298 William F. Street, Rehoboth Beach); said property being identified as Sussex County Tax Map Parcel Number 3-34-20.09-91.00.

1. The Board was given copies of the Application, a survey of the Property dated August 16, 2016, a certificate of compliance, a letter from Janelle Cornwell, a building permit application, a survey of the Property dated May 21, 2018, 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 two (2) letters in support of the Application or no correspondence in opposition to the Application.
3. The Board found that Rochelle Ferguson was sworn in to testify about the Application. Bill Schab, Esquire, presented the Application on behalf of the Applicants. Mr. Schab presented the Board with an updated survey of the Property and pictures of the lot.
4. The Board found that Mr. Schab stated that there have been other variances granted in the neighborhood.
5. The Board found that Mr. Schab stated that the Property is unique because it is so narrow.
6. The Board found that Mr. Schab stated that many of the homes in the area are tall and narrow to fit on the lots.
7. The Board found that Mr. Schab stated that the average front yard setback is 25 feet.
8. The Board found that Mr. Schab stated that the original plans called for the steps to project 5 feet into the front yard setback area. The steps, instead, project 5.8 feet into the setback area. The error was discovered after the steps were built.
9. The Board found that Mr. Schab stated that the house is a split-level home and the steps go to the second floor of the home.
10. The Board found that Mr. Schab stated that the steps cannot be otherwise developed due to the size of the lot.
11. The Board found that Mr. Schab stated that this situation was not created by the Applicants but by a mix up with the builder about placement of the steps leading to an upper floor and the building being a split-level house.
12. The Board found that Mr. Schab stated that the variance will not alter the essential character of the neighborhood as there are many other homes where either the porch or steps also extend into setbacks. There is also support from neighbors.
13. The Board found that Mr. Schab stated that this request is the minimum variance without causing a huge financial hardship to the Applicant.

14. The Board found that Ms. Ferguson affirmed the statements made by Mr. Schab as true and correct.
15. The Board found that Ms. Ferguson testified that her neighbors love the house.
16. The Board found that Ms. Ferguson testified that her neighbor's porch extends almost as much as her steps.
17. The Board found that Ms. Ferguson testified that she relied on the builder and surveyor.
18. The Board found that Mr. Schab stated that the property line is approximately 14 feet from the edge of paving of William F. Street.
19. The Board found that no parties appeared in support of or in opposition to the Application.
20. 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 as it is a small, narrow lot. These conditions greatly limit the buildable area of the Property and these unique conditions have created an exceptional practical difficulty for the Applicants. The situation is also unique because the Applicants relied on their builder and surveyor to construct the dwelling in compliance with the setback requirements only to later learn of this encroachment.
 - 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 Applicants seek to retain an existing set of steps but are unable to do so without violating the Sussex County Zoning Code. The Board is convinced that the variance is necessary to enable the reasonable use of the Property as the variance will allow the steps to remain on the Property. The Board is convinced that the shape and location of the steps are reasonable, which is confirmed when reviewing the survey provided by the Applicants. The Board notes that the steps lead to the second floor of the home but the dwelling is a split-level house and this provides access to the home.
 - c. The exceptional practical difficulty was not created by the Applicants. There was no evidence that the Applicants created the size of the lot. Rather, those conditions predated the Applicants' ownership of the Property and have limited the building envelope. These conditions have created the exceptional practical difficulty for the Applicants who seek to retain an existing set of steps. The Board also notes that the Applicants relied on licensed builders to construct the steps in compliance with the Sussex County Zoning Code only to later learn of this encroachment. It is clear to the Board that the exceptional practical difficulty was not created by the Applicants.
 - d. The variance 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 existing steps will have no effect on the character of the neighborhood. Neighbors have indicated support for the Application and no evidence to the contrary was submitted. The Board also notes that the survey indicates a significant gap between the front property line and the edge of paving of William F. Street. As such, the encroachments into the front yard setback area is likely less noticeable than if the edge of paving matched the front property line.
 - e. The variance sought is the minimum variance necessary to afford relief and the variance requested represents the least modification possible of the

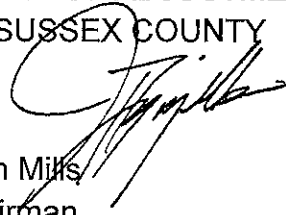
regulation at issue. The Applicants have demonstrated that the variance sought will allow the Applicants to retain an existing set of steps on the Property. No additions or modifications to those steps are proposed.

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



John Mills
Chairman

If the use is not established within two (2) years from the date below the application becomes void.

Date November 20, 2018