

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

**IN RE: BOB BROOKS**

**(Case No. 12274)**

A hearing was held after due notice on April 1, 2019. The Board members present were: Mr. Dale Callaway, Ms. Ellen Magee, Mr. John Mills, Mr. John Williamson, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for variances from the front yard setback requirement for proposed structures.

Findings of Fact

The Board found that the Applicant is requesting a variance of 7.9 feet from the thirty (30) feet front yard setback requirement for a proposed deck and a variance of 5.0 feet from the thirty (30) feet front yard setback requirement for a proposed set of steps. This application pertains to certain real property located on the west side of Barney Lane, approximately 952 feet south of Double Bridges Road (911 Address: N/A); said property being identified as Sussex County Tax Map Parcel Number 1-34-19.00-343.00.

1. The Board was given copies of the Application, a survey of the Property dated December 31, 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 no correspondence in support of the Application or in opposition to the Application.
3. The Board found that Bob Brooks and Andrew Goldberger were sworn in to give testimony about the Application. Mr. Brooks submitted exhibits for the Board to review.
4. The Board found that Mr. Brooks testified that the Property is located at the end of a cul-de-sac but the cul-de-sac was never physically created. The cul-de-sac on paper, however, protrudes into the Property by 15 feet.
5. The Board found that Mr. Brooks testified that the Property is unique due its irregular shape and size. The lagoon is also located to the west of the Property and Miller's Creek is located to the south of the Property. The width of the Property in the front is 63 feet but narrows to 34.45 feet wide in the rear.
6. The Board found that Mr. Brooks testified that the Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code because the Property is burdened by the physical conditions beyond the control of the Applicant.
7. The Board found that Mr. Brooks testified that the size and shape of the Property restrict the construction of a typical house plan similar to others nearby. The Applicant originally wished to purchase a mobile home but the lot size and restrictions did not allow for a plan that was suitable.
8. The Board found that Mr. Brooks testified that the exceptional practical difficulty was not created by the Applicant but by a 1967 subdivision plan when the lot was created.
9. The Board found that Mr. Brooks testified that the lot is under 10,000 square feet.
10. The Board found that Mr. Brooks testified that the variances will not alter the essential character of the neighborhood.
11. The Board found that Mr. Brooks testified that the request is only to regain use of the area of Property removed by the proposed cul-de-sac. The request is for less

- than 8 feet and the proposed cul-de-sac encroaches 15 feet onto the Applicant's property.
12. The Board found that Mr. Brooks testified that the Property is serviced by public sewer and well water but the well's location further restricts the building envelope.
  13. The Board found that no one appeared in support of or in opposition to the Application.
  14. 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 odd shape and size. The Property is a small lot consisting of only 6,312 feet and borders two bodies of water. The rear of the lot is significantly narrow as it is only 34.45 feet wide. These conditions have created an unusually small building envelope that is further limited since the Property is located at the end of a paper cul-de-sac which does not exist. Furthermore, the Property is served by well water and the well is located in the building envelope thereby further reducing the buildable area. These unique characteristics of this Property limit the buildable area available to the Applicant and have created an exceptional practical difficulty for the Applicant who seeks to construct a deck and steps on the lot.
    - 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 shape and the buildable area thereof is limited due to its size, shape, and location of the well. The Applicant seeks to construct a deck and steps on the lot 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 a reasonably sized deck and steps to be constructed on the lot. 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 Applicant.
    - c. The exceptional practical difficulty was not created by the Applicant. The Applicant did not create the unusual size and shape of the Property. The lot was created in 1967 prior to the enactment of the Sussex County Zoning Code. These conditions have resulted in a limited building envelope on the Property and the small and unusually shaped building envelope has created the exceptional practical difficulty. The small building envelope was further limited by the location of the well. 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 Applicant but was created by the lot's unique characteristics.
    - 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 deck and steps will protrude into the front yard setback but the front yard is reduced by a cul-de-sac which does not exist. As such, the front yard of the Property appears larger than it actually is. It is likely that the encroachment would not be noticeable since the cul-de-sac has not been completed. No evidence was presented that the variances would somehow alter the essential character of the neighborhood.

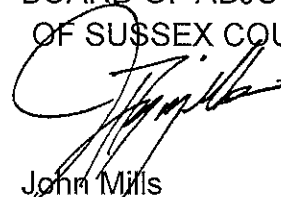
- e. The variances sought are the minimum variances necessary to afford relief and the variances requested represent the least modifications possible of the regulation at issue. The Applicant has demonstrated that the variances sought will allow the Applicant to construct a deck and steps. The Board is convinced that the Applicant explored other options for the placement of these structures but was constrained by the unique conditions of the lot. The house could not be placed rather into the rear yard due to the location of the well and the narrowness of the lot in the rear. As such, the house was moved closer to the front yard. The house itself is not a deep house and the Applicant appears to have taken measures to otherwise fit the structures on the lot in compliance with the Code.

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. John Mills, Mr. John Williamson, 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 June 4, 2019.