

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: BEATRICE OLIVER

(Case No. 12275)

A hearing was held after due notice on March 18, 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 a variance from the front yard setback and maximum fence height requirement for existing structures.

Findings of Fact

The Board found that the Applicant is seeking a variance of 18 feet from the forty (40) feet front yard setback requirement along Cave Neck Road for existing steps; a variance of 15 feet from the forty (40) feet front yard setback requirement along Sweetbriar Road for existing steps; a variance of 11 feet from the forty (40) feet front yard setback requirement along Sweetbriar Road for an existing deck; a variance of 38.9 feet from the forty (40) feet front yard setback requirement along Sweetbriar Road for an existing gazebo; a variance of 35.3 feet from the forty (40) feet front yard setback requirement along Sweetbriar Road for an existing gazebo; and a variance of 2.5 feet from the 3.5 feet maximum height requirement for a fence in the front yard setback on a through lot. This application pertains to a through lot located at the southeast corner of Cave Neck Road and Sweetbriar Road (911 Address: 16891 Sweetbriar Road, Lewes) said property being identified as Sussex County Tax Map Parcel Number: 2-35-22.00-14.00.

1. The Board was given copies of the Application, a building permit application, a contract for a fence, a certificate of compliance, photographs, minutes and findings of fact for Case No. 10726, a survey of the Property dated October 30, 2018, aerial photographs 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 letter in support of the Application and no correspondence in opposition to the Application.
3. The Board found that Kevin Smith and Beatrice Oliver were sworn in to testify about the Application.
4. The Board found that Mr. Smith testified that a variance was granted by the Board in 2010 for the house but the steps and deck were not included in the request at that time even though they were shown on the survey presented in 2010.
5. The Board found that Mr. Smith testified that a building permit was issued for the deck. According to Ms. Oliver, the deck was built 4-5 years ago by Byrd Construction.
6. The Board found that Mr. Smith testified that the Property is unique as it is a pie-shaped lot and is considered a through lot with two front yards. As a result, the Property is subject to front yard setback requirements of 40 feet along both Cave Neck Road and Sweetbriar Road.
7. The Board found that Mr. Smith testified that the deck was constructed so as not to protrude past the corner of the house.
8. The Board found that Mr. Smith testified that the gazebo has been on the Property for 10 years and was on the Property when the garage was built but was moved after the garage was constructed. The gazebo could be moved but, because of the shape of the Property, it would need a variance wherever it is placed on the Property. The Applicant prefers to leave the gazebo in its existing location.

9. The Board found that Mr. Smith testified that the fence is a 6 feet tall, vinyl fence and the Applicant retained a contractor to build the fence in May 2015. The builder refused to attend the hearing.
10. The Board found that Mr. Smith testified that the Property cannot otherwise be developed and the variances are necessary to keep the structures.
11. The Board found that Mr. Smith testified that the fence is on the side yard property line to provide privacy for the Applicant and to identify the boundary line. The neighbor stores unsightly materials.
12. The Board found that Mr. Smith testified that the need for the variance was not created by the Applicant.
13. The Board found that Mr. Smith testified that the fence does not impede vision of approaching traffic or the intersection and the fence upgrades the aesthetics of the Property.
14. The Board found that Mr. Smith testified that the lot was created prior to the Sussex County Zoning Code.
15. The Board found that Mr. Smith testified that the variances will not alter the essential character of the neighborhood as the structures have been in place for a number of years.
16. The Board found that Mr. Smith testified that the variances are the minimum variances to afford relief.
17. The Board found that Mr. Smith testified that there is approximately 7-8 ft. between property line and the edge of pavement.
18. The Board found that Ms. Oliver testified the septic system is located in the front of the house and the well is to the side of the house. These systems further limit the buildable area of the property.
19. The Board found that no one 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 unrebutted, the Board determined that the application for the variances met the standards for granting a variance. The findings below further support the Board's decision to approve the variance requests.
 - a. The Property is unique as it is a pie-shaped lot with frontage along two roads. Due to these conditions, the building envelope is significantly reduced. The building envelope is further reduced since the Property is served by well and septic. These conditions have resulted in an exceptionally limited building envelope. It is clear to the Board that the lot's unique characteristics have created an exceptional practical difficulty for the Applicant who seeks to retain existing structures 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 is limited due to its shape, the location of the well and septic system, and its designation as a through lot. These conditions greatly limit the building envelope. The Applicant seeks to retain reasonably sized structures on the lot but is unable to do so without violating the Sussex County Zoning Code. The Board is convinced that the variances for those structures are necessary to enable the reasonable use of the Property as the variances will allow the Applicant to retain the structures on the Property. The Board is convinced that the location of the structures are also reasonable, which is confirmed when reviewing the survey provided by the Applicant. The Board also notes that the height of the fence is reasonable and provides the Applicant with privacy from its neighbor.
 - c. The exceptional practical difficulty was not created by the Applicant. The Applicant did not create the shape and unusual conditions of the lot. The

unique characteristics of the Property are clear when reviewing the survey. The Board also notes that the Applicant relied on professionals to construct the structures on the Property only to later discover the encroachments. The Board is convinced that the exceptional practical difficulty was not created by the Applicant but was created the lot's unique characteristics. The Board also notes that the lot was created prior to the enactment of the Sussex County Zoning Code.

- 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 fence does not present visibility concerns along Cave Neck Road or Sweetbriar Road. 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 there is approximately 7-8 feet from the edge of paving of the adjacent roads to the property line so the impact of the higher fence should not be as impactful as a fence that is closer to the roadway.
- e. The variances 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 the structures on the Property. No additions or modifications to those structures are proposed.

The Board granted the variance application finding that the variance application 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 of the motion 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 April 16, 2019