

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

**IN RE: DAVID TAYLOR & DORIS TAYLOR**

**(Case No. 12286)**

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 corner front yard and front yard setback requirement for proposed and existing structures.

Findings of Fact

The Board found that the Applicants are requesting a variance of 16.7 feet from the thirty (30) feet front yard setback requirement for the existing dwelling, a variance of 16.3 feet from the thirty (30) feet front yard setback requirement for the existing house, a variance of 15.3 feet from the thirty (30) feet front yard setback requirement for the proposed vestibule, a variance of 18 feet from the thirty (30) feet front yard setback requirement for the proposed steps, a variance of 14 feet from the thirty (30) feet front yard setback requirement for the existing deck, a variance of 5.7 feet from the fifteen (15) feet corner front yard setback requirement for the existing house, and a variance of 4.4 feet from the fifteen (15) feet corner front yard setback requirement for the existing house. Mary Avenue is considered the front yard and Pepper Avenue is considered the corner front yard. This application pertains to certain real property located on the west side of Mary Avenue approximately 89 feet south of Beach Avenue (911 Address: 102 Mary Avenue, Dewey Beach); said property being identified as Sussex County Tax Map Parcel Number 3-34-23.06-83.00.

1. The Board was given copies of the Application, a right-of-way location plan dated September 12, 2017, certificates of occupancy, a property record card, a survey of the Property dated October 9, 2013, floor plans, 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 Elizabeth Zando and David Taylor were sworn in to give testimony. Ms. Zando submitted pictures of the area to the Board to review.
4. The Board found that Ms. Zando testified that the Property is located in the area called North Indian Beach and is primarily used for vacation homes.
5. The Board found that Ms. Zando testified that the area has a lot of non-conforming properties.
6. The Board found that Ms. Zando testified that the Applicants are requesting a variance to build a vestibule in the front of the house to increase energy efficiency and to provide protection from weather.
7. The Board found that Ms. Zando testified that the Property unique because it is a double-lot and is surrounded by non-conforming older homes.
8. The Board found that Ms. Zando testified that the need for the variances was not created by the Applicants as they purchased the Property with the house already non-conforming.
9. The Board found that Ms. Zando testified that the variances are the minimum variances to allow for some protection from inclement weather.

10. The Board found that Ms. Zando testified that the variances will not alter the essential character of the neighborhood as there are many non-conforming homes in the area.
11. The Board found that Mr. Taylor testified that this area is mostly vacation homes and that he is one of the few full-time residents.
12. The Board found that Mr. Taylor testified that this request will not impact the neighborhood.
13. The Board found that Mr. Taylor testified that there have been no complaints or traffic concerns.
14. The Board found that Mr. Taylor testified that Pepper Avenue is a foot path and Mary Avenue is the primary road.
15. The Board found that no one 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 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 an undersized lot measuring only 9,877 square feet and is a corner lot with an odd shape. These conditions have created a small building envelope that is further limited by the corner front yard setback requirements. These unique characteristics of this Property limit the buildable area available to the Applicants and have created an exceptional practical difficulty for the Applicants who seek to retain an existing dwelling and deck and to construct a vestibule 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 the buildable area thereof is limited due to its size. The Applicants seek to retain an existing dwelling and deck and to construct a vestibule and steps on the lot but are 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 existing dwelling and deck to remain on the lot and for the Applicants to construct a reasonable vestibule and steps 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 Applicants. The Board notes that most of these structures have been on the lot for quite some time and the vestibule and steps are proposed to provide a covered entrance to the home.
  - c. The exceptional practical difficulty was not created by the Applicants. The Applicants did not create the unusual size of the Property and the Applicants did not construct the existing dwelling. These conditions have resulted in a limited building envelope on the Property and the small building envelope has created the exceptional practical difficulty. The small building envelope was further limited by the corner front yard setback requirements. 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 Applicants but was created by the lot's unique characteristics and by the placement of the dwelling on the lot by a prior owner.
  - 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 structures have been on the Property for many years

and no complaints were noted in the record about them. No evidence was presented that the variances would somehow alter the essential character of the neighborhood. The lack of evidence is telling since, if the existing dwelling and deck had somehow altered the essential character of the neighborhood, the Board would expect some evidence thereof. The Board also notes that the proposed vestibule and steps are reasonable additions consistent with the neighborhood. Lastly, Pepper Avenue is a paper street that is not used for a road so the encroachments into the corner front yard are less problematic than if Pepper Avenue was used for vehicular traffic.

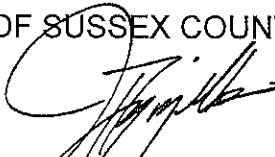
- e. The variances sought are the minimum variances necessary to afford relief and the variances requested represent the least modifications possible of the regulations at issue. The Applicants have demonstrated that the variances sought will allow the Applicants to retain an existing dwelling and deck and to construct a reasonable vestibule and steps. These additions cannot be added elsewhere to the Property while providing covered access to the dwelling.

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.