

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

**IN RE: JOANNE ZETUSKY**

**(Case No. 12303)**

A hearing was held after due notice on May 6, 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 requirements for proposed structures.

Findings of Fact

The Board found that the Applicant is requesting a variance of 6.6 feet from the thirty (30) feet front yard setback requirement for a proposed steps and a variance of 3.6 feet from the thirty (30) feet front yard setback requirement for a proposed porch. This application pertains to certain real property located on the northeast side of Oak Street approximately 240 feet north of Club House Road in the Banks Acres subdivision (911 Address: 31435 Oak Street, Ocean View); said property being identified as Sussex County Tax Map Parcel Number 1-34-12.00-111.00.

1. The Board was given copies of the Application, a survey of the Property dated February 18, 2019, a site plan of the Property dated February 22, 2019, 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 Joanne Zetusky, Richard Orsini, and Tim Parker were sworn in to give testimony about the Application.
4. The Board found that Mr. Orsini testified that the Applicant purchased the Property in 1980 and the home has been on the Property since the 1970s. The Applicant intend to replace the house with a new house in almost the same footprint as the prior home.
5. The Board found that Mr. Orsini testified that the Property is unique because the well is in the front of the home but will have to be moved to the rear. An in-ground propane tank will also have to be installed. Due to these conditions, the home cannot be set farther back on the Property.
6. The Board found that Mr. Orsini testified that other houses in the neighborhood are closer to the front yard.
7. The Board found that Mr. Orsini testified that the Property cannot be developed with a front porch without the variance.
8. The Board found that Mr. Orsini testified that the variances will not alter the character of the neighborhood but will be an improvement by replacing the old dwelling.
9. The Board found that Mr. Orsini testified that the exceptional practical difficulty was not caused by the Applicant as she did not have control over the placement of the well and sewer.
10. The Board found that Mr. Orsini testified that the variances requested are the minimum requests to afford relief.
11. The Board found that Ms. Zetusky testified that the current dwelling is already non-conforming and the new dwelling will have the same footprint but the variances are necessary for the porch and steps.

12. The Board found that Ms. Zetusky testified that there have been no complaints from neighbors.
13. The Board found that Mr. Parker testified that the new porch will be raised on a permanent foundation which is why the variance is requested for the steps.
14. The Board found that no one appeared in support of or in opposition to the Application.
15. 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 the location of the well and gas tank. Those improvements are to be located in the rear of the proposed house and will be located in the building envelope. As such, the building envelope is quite limited. The Property is also small as it is only 10,000 square feet. If it was one square foot smaller, the Applicant would be entitled to reduced setback requirements which would afford them additional building space. As it is, the Applicant is not afforded that relief. 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 porch 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 and location of the well and gas tank. The Applicant seeks to construct a porch 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 reasonably sized porch 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 of the Property or the location of the well. The lot was created prior to the Applicant's purchase of the Property. 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 location of the well and gas tank. 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 porch and steps will protrude into the front yard setback but the front yard appears larger than it actually is because the edge of paving of Oak Street does not match the front property line. As such, it is likely that the encroachment would not be noticeable. No evidence was presented that the variances would somehow alter the essential character of the neighborhood. The lack of evidence is telling since the prior house on the Property encroached a similar distance into the front yard setback

area and the Board would have expected some evidence of the adverse impact if such evidence existed.


- 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 porch 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 gas tank. 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 of the Motion to approve 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 18, 2019.