

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: ROBERT SHIPLEY

(Case No. 12340)

A hearing was held after due notice on August 5, 2019. The Board members present were: Dr. Kevin Carson, Mr. Jeff Chorman, Ms. Ellen Magee, Mr. John Williamson, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for a variance from the front yard setback requirement for proposed steps.

Findings of Fact

The Board found that the Applicant is seeking a variance of 4.2 feet from the thirty (30) feet front yard setback requirement from Fenwick Shoals Boulevard for proposed 2nd story steps. This application pertains to certain real property located at the northwest corner of Water Walk Way and Fenwick Shoals Boulevard in the Fenwick Shoals subdivision (911 Address: 38032 Fenwick Shoals Boulevard, Selbyville); said property being identified as Sussex County Tax Map Parcel Number 5-33-19.00-761.00. After a hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, an aerial photograph of the Property, a survey of the Property dated June 6, 2019, 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 or in opposition to the Application.
3. The Board found that Robert Shipley was sworn in to testify about the Application.
4. The Board found that Mr. Shipley testified that the Property is a corner lot with a unique shape and that the dwelling cannot otherwise be developed for steps due to the shape of the lot.
5. The Board found that Mr. Shipley testified that neighbors and the homeowners association support the request.
6. The Board found that Mr. Shipley testified that there is a ditch located to the rear of the Property.
7. The Board found that Mr. Shipley testified that the direction of the steps cannot be changed due to the location of the garages. He also testified that his architect expressed concerns about whether the steps would meet code requirements if turned and that the homeowners association would not approve the turned steps.
8. The Board found that Mr. Shipley testified that the house will have 2 garages which be located on each side of the steps.
9. The Board found that Mr. Shipley testified that the second floor of the home is the main living floor of the dwelling and that the house will be built on a slab and not on pilings.
10. The Board found that Mr. Shipley testified that the exceptional practical difficulty was not created by him because the property had this unique shape when purchased.
11. The Board found that Mr. Shipley testified that the variance will not alter the essential character of the neighborhood as there are many other homes with similar steps leading to the second floor.
12. The Board found that Mr. Shipley testified that it is a minimum variance to allow for the steps to the dwelling.
13. The Board found that Mr. Shipley testified that the house is only 36 feet deep but will consist of 4,500 square feet and 3 stories.

14. The Board found that Mr. Shipley testified that the dwelling cannot be moved farther back on the Property as it would then encroach into rear setbacks.
15. The Board found that Mr. Shipley testified that he designed the house to minimize the need for a variance and that the covered porch to the rear of the home has been shortened in width.
16. The Board found that Mr. Shipley testified that the lot has no flooding problems.
17. The Board found that Mr. Shipley testified that there is no difference between the front property line and the edge of paving of the adjacent road.
18. The Board found that no one appeared in support of or in opposition to the Application.
19. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, which the Board weighed and considered, the Board determined that the application failed to meet the standards for granting a variance. The findings below further support the Board's decision to deny the Application.
 - a. The Applicant failed to prove that a reasonably sized set of steps could not be built in strict conformity with the Sussex County Zoning Code. The Applicant is constructing a new home on this vacant lot and he has worked with an architect to design the home such that the steps will encroach into the front yard setback area. The Applicant argues that the Property has a unique shape and that, due to this shape, the Property cannot be developed in strict conformity with the Code. The Board, however, was not convinced by this argument. The Property is currently vacant and a significant portion of the building envelope is unused. The Property is essentially a blank slate for the Applicant to design his home in compliance with the Code. The Applicant failed to convince the Board that a home with steps could not be constructed in compliance with the Code. Perhaps the house and steps would be not the exact home that the Applicant wants but the Property appears to have a large enough building envelope for the Applicant to construct a reasonably sized home in compliance with the Sussex County Zoning Code. The Board notes that the house will consist of 3 stories and approximately 4,500 square feet so the house is not small. For these reasons, the Board finds that the Property could be developed in strict conformity with the Code and that the variance is not necessary to enable reasonable use of the Property.
 - b. The Board finds that the Applicant is creating his own exceptional practical difficulty by proposing to construct a set of steps which does not fit within the building envelope. The Applicant's decision to construct these steps in this location is the reason for the need for a variance and has nothing to do with the size, shape, or condition of the Property. There is no unusual condition to the Property which has created this difficulty. The building envelope appears to otherwise be able to fit a house and steps without the need for the variance. The Board was not convinced that the variance request was the product of a *need*. Instead, the variance request appears to be the product of a *want* as the Applicant seeks to build the set of steps as proposed for purposes of convenience, profit, and / or caprice. Since the Applicant can build a set of steps that can comply with the Sussex County Zoning Code, the need for the variance is something created by the Applicant's wants rather than an unusual physical condition relating to the Property. The Applicant has thus created his own exceptional practical difficulty.
 - c. Since the variance is not necessary to enable the reasonable use of the Property, the Board also finds that the variance requested is not the minimum variance necessary to afford relief. Furthermore, the Board finds

that no variance is needed to afford relief since there is space to build a reasonably sized set of steps on the Property in compliance with the Sussex County Zoning Code.

The Board denied the variance application finding that it failed to meet the standards for granting a variance.

Decision of the Board

Upon motion duly made and seconded, the variance application was denied. The Board Members in favor of the Motion to deny were Dr. Kevin Carson, Mr. Jeffrey Chorman, Ms. Ellen Magee, Mr. John Williamson, and Mr. Brent Workman. No Board Member voted against the Motion to deny the variance application.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY



Ellen M. Magee
Chair

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

Date October 8, 2019