

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: SUZANNE ROSETTI

(Case No. 12368)

A hearing was held after due notice on October 7, 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 variances from the side yard and rear yard setback requirements for existing structures.

Findings of Fact

The Board found that the Applicant is requesting a variance of 1.25 feet from the ten (10) feet side yard setback requirement on the south side for an existing dwelling. The Property is located on the southwest side of West Pond Circle approximately 135 feet south of Breakwater Run within the Keenwick Sound subdivision (911 Address: 36744 West Pond Circle, Selbyville) said property being identified as Sussex County Tax Map Parcel Number: 5-33-19.00-495.00. After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a survey of the Property dated August 6, 2019, a building permit application, notices of violation, 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 or in opposition to the Application.
3. The Board found that Suzanne Rosetti was sworn in to testify about the Application.
4. The Board found that Ms. Rosetti testified that the Property is unique as it is a small lot which is narrow at the front but widens towards the rear.
5. The Board found that Ms. Rosetti testified that the small lot ordinance does not offer relief because the Property is located in an RPC.
6. The Board found that Ms. Rosetti testified that only a small portion of the house encroaches into the setback area.
7. The Board found that Ms. Rosetti testified that the Property cannot otherwise be developed as the dwelling has already built.
8. The Board found that Ms. Rosetti testified that the Applicant would have made changes to the plan had she been aware there was a problem.
9. The Board found that Ms. Rosetti testified that the Applicant was not responsible for the exceptional practical difficulty as she depended on the builder to follow Sussex County Code. She noted that the builder obtained the building permit and that the builder was provided a copy of the survey of the lot.
10. The Board found that Ms. Rosetti testified that the variance will not alter the essential character of the neighborhood.
11. The Board found that Ms. Rosetti testified that there have been no complaints from neighbors and that neighbors have complimented her on the house.
12. The Board found that Ms. Rosetti testified that the encroachment was discovered during final inspection.
13. The Board found that Ms. Rosetti testified that similar variances have been granted in the area.
14. The Board found that Ms. Rosetti testified that the variance requested is the minimum amount to bring the dwelling into compliance.

15. The Board found that one person appeared in support of and no one appeared 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 a small and narrow lot. The lot consists of only 7,879 square feet and is angled such that the rear yard is wider than the front yard. These conditions have created a small and unique building envelope. Since the Property is located in an RPC, the Applicant is not afforded the benefit of reduced setbacks even though the Property is small and would otherwise be afforded reduced setbacks. If the reduced setbacks were to apply, no variance for the dwelling would be needed. Nevertheless, the building envelope is small due to the Property's unique conditions and these unique conditions have created an unnecessary hardship and exceptional practical difficulty for the Applicant.
 - b. The unnecessary hardship and exceptional practical difficulty are not being created by the provisions of the Sussex County Zoning Code.
 - c. Due to the uniqueness of the Property and situation, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property is small and narrow and the building envelope is limited due to these conditions. The Applicant seeks to retain a reasonably sized dwelling on the Property but is unable to do so without violating the Sussex County Zoning Code. The Board is convinced that the variance is necessary to enable the reasonable use of the Property as the variance will allow the dwelling to remain on the Property. The Board is convinced that the shape and location of the dwelling are reasonable, which is confirmed when reviewing the survey provided by the Applicant. The Board also notes that only small portions of the dwelling encroach into the setback area.
 - d. The unnecessary hardship and exceptional practical difficulty were not created by the Applicant. The Property has unique physical conditions, as discussed above, and those conditions have limited the building envelope on the Property and have created an exceptional practical difficulty. Furthermore, the Applicant worked with a builder, who obtained the building permit and was provided a copy of the survey, only to later discover that the dwelling was constructed outside the building envelope. It is the Board's position that the Applicant did not create the unnecessary hardship and exceptional practical difficulty.
 - e. The variance 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 dwelling only encroaches into the setback area by small amount and only portions of the dwelling encroach. It is quite possible that the encroachment would not be noticeable without a survey. Neighbors have indicated to the Applicant that they support the request and no evidence was presented that the dwelling would somehow alter the essential character of the neighborhood or be detrimental to the public welfare.
 - f. The variance sought is the minimum variance necessary to afford relief and the variance requested represents the least modification possible of the regulation at issue. The Applicant has demonstrated that the variance sought will allow the Applicant to retain a reasonable dwelling on the Property. No additions or modifications to the dwelling are proposed.

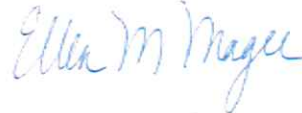
- g. The condition or situation of the Property and the intended use of the Property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the Sussex County Zoning Code.

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 Dr. Kevin Carson, Mr. Jeffrey Chorman, Ms. Ellen Magee, 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



Ellen M. Magee
Chair

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

Date December 3, 2019