

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: PAUL ANTONIO

(Case No. 12453)

Public hearings were held after due notice on August 3, 2020, August 17, 2020, and September 14, 2020. The Board members present at the August 3rd meeting were: Ms. Ellen Magee, Mr. John Williamson and Mr. Brent Workman. The Board members present at the August 17th meeting were: Dr. Kevin Carson, Mr. Jeffrey Chorman, Ms. Ellen Magee, Mr. John Williamson, and Mr. Brent Workman. The Board members present at the September 14th meeting were: Dr. Kevin Carson, Mr. Jeffrey Chorman, Ms. Ellen Magee, and Mr. John Williamson.

Nature of the Proceedings

This is an application for variances from the corner front yard setback requirement for proposed structures.

Findings of Fact

The Board found that the Applicant is requesting variances of 3.5 feet from the fifteen (15) feet corner front setback requirement for the proposed dwelling, deck, stairs, and HVAC units. This application pertains to certain real property located on the north side of Garfield Avenue within the Edgewater Acres subdivision (911 Address: 39176 Garfield Avenue, Selbyville); said property being identified as Sussex County Tax Map Parcel Number 5-33-20.18-187.00. After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a setback information request form, floor plans, deed restrictions, pictures, renderings of the proposed house, letters of support, a survey dated March 25, 2020, a survey dated January 22, 2020, a survey dated August 6, 2020, and a portion of the tax map of the area.
2. The Board found that the Office of Planning & Zoning received five letters in support of and two letters in opposition to the Application.
3. The Board found that Paul Antonio and Joseph Day, III, were sworn in to give testimony about the Application.
4. The Board found that Mr. Antonio testified that the Property is unique as there is an abandoned paper street at the side of the Property which increases the side yard setback from 5 feet to 15 feet and that the paper street is used as his neighbor's driveway.
5. The Board found that Mr. Antonio testified that the model home chosen by the Applicant will not fit on the parcel without the variance.
6. The Board found that Mr. Antonio testified that the exceptional practical difficulty has not been caused by the Applicant but by the size of the Property.
7. The Board found that Mr. Antonio testified that he acquired the Property on February 5, 2020 and he has made no changes to the Property.
8. The Board found that Mr. Antonio testified that the variances will not alter the essential character of the neighborhood but improve it by building a new house. He noted that the existing house is old and has been vacant for a long time.
9. The Board found that Mr. Antonio testified that the variance requested are the minimum variances to afford relief.
10. The Board found that Mr. Antonio testified that neighbors support the request and the one neighbor in opposition was confused because the request is only for the corner front and not the additional variances referenced in the advertisement.

11. The Board found that Mr. Antonio testified that the proposed house only needs a variance from the west corner front yard setback requirement.
12. The Board voted to leave the record open until August 17, 2020, to allow the Applicant to submit a survey showing the proposed dwelling and to allow for the Applicant and the public to testify and present evidence.
13. The survey was submitted to the Board and, on August 17, 2020, the Board held a second public hearing on the matter. Mr. Antonio and Mr. Day were sworn in to testify at that hearing as well.
14. The Board found that Mr. Antonio testified that he is requesting 3.5 foot variance from the corner front setback to allow for a margin of error when placing the house.
15. The Board found that Mr. Antonio testified that the steps and HVAC will not encroach farther into the setbacks than the deck. The deck will be raised and the HVAC system will be located under the deck.
16. The Board found that Mr. Day testified that the HVAC could be moved to the rear yard but would still need a variance.
17. The Board found that Mr. Antonio testified that the stairs will be located on the west side to provide access to the house and the deck will wrap around the rear of the house.
18. The Board found that Mr. Day testified that they worked off the model home and that changes to the exterior dimensions would limit the interior of the home.
19. The Board found that Mr. Day testified that the paper street is rarely used.
20. The Board found that Mr. Day testified that the corner front on to Garfield Avenue has created the need for a variance but that street is used by the neighbor as part of their driveway and is not used as a regular street.
21. The Board found that Mr. Day testified that the variances will not alter the character of the neighborhood but will enhance it and that there are similar conditions in the neighborhood.
22. The Board found that Mr. Day testified that the new house will be elevated out of the flood plain and will be consistent with the neighborhood.
23. The Board found that Mr. Day testified that neighbors support the request and he believes that the opposition opposed a rear yard variance, which is not being sought.
24. The Board found that Mr. Day testified that the exceptional practical difficulty was not created by the owner.
25. The Board found that Mr. Day testified that the building envelope is too small and the lot is narrow and is limited by the corner front yard setback requirements.
26. The Board found that Mr. Day testified that other houses in the neighborhood received variances.
27. The Board found that Mr. Antonio testified that storage and parking will be located on the ground level and the house will consist of 2 stories above the ground level.
28. The Board found that no one appeared in person in support of or in opposition to the Application.
29. The Board left the record open until September 14, 2020, at which time members of the public and the Applicant could present testimony or evidence regarding the Application. No parties appeared in support or in opposition to the Application.
30. 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 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 lot measuring only 4,873 square feet and needs to be elevated due to flood plain regulations. Furthermore, the Property is located adjacent to a paper street which has not been constructed. Consequently, the Applicant cannot take advantage of the small lot ordinance which would reduce the setback requirements. These

unique conditions have created a small and limited building envelope. The Property's unique conditions have thus created an unnecessary hardship and exceptional practical difficulty for the Applicant who seeks to construct a new dwelling with HVAC units, deck, and steps.

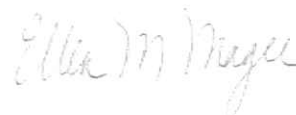
- b. The unnecessary hardship and exceptional practical difficulty are not being created by the provisions of the Sussex County Zoning Code.
- c. Due to the uniqueness of the Property and the situation, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Applicant seeks to construct a new dwelling with HVAC units, deck, and steps but is unable to do so while complying with the Sussex County Zoning Code. The Board is thus convinced that the variances are necessary to enable the reasonable use of the Property as the variance will allow the Applicant to construct a new dwelling with HVAC units, deck, and steps on the lot. The Board is convinced that the size, shape, and location of the structures are reasonable.
- d. The unnecessary hardship and exceptional practical difficulty were not created by the Applicant. As discussed above, the Property has unique conditions which have limited the Applicant's ability to reasonably develop the Property. The Applicant did not create the unique conditions of the lot and the Applicant has designed a reasonably sized house to fit on the lot but cannot comply with the setback requirements due to the paper street. The Board was convinced that the Applicant has not created the exceptional practical difficulty and unnecessary hardship. Furthermore, the Board is convinced that the Applicant did not come to the Property with an illegal use in mind. Rather, the Applicant is limited by the physical conditions of the Property and the Applicant needs the variances in order to reasonably develop the Property as proposed.
- e. 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 variances will have no effect on the character of the neighborhood. The variances will allow the Applicant to remove an older, vacant home and replace it with a new dwelling with HVAC units, deck, and steps. The variances are only needed for separation from a paper street which has not been developed. Rather, the paper street is used for a neighbor's driveway. No evidence was presented which demonstrate that the variances would somehow alter the essential character of the neighborhood or be detrimental to the public welfare.
- f. 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 Applicant has demonstrated that the variances sought will allow the Applicant to construct a new dwelling with HVAC units, deck, and steps as 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 were Dr. Kevin Carson, Mr. Jeffrey Chorman, Ms. Ellen Magee, and Mr. John Williamson. No Board Member voted against the motion to approve Application. Mr. Brent Workman did not participate in the vote on this 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 November 2, 2020