

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

**IN RE: RONALD J. MASI & LISA K. MASI**

**(Case No. 12657)**

A hearing was held after due notice on February 21, 2022. The Board members present were: Dr. Kevin Carson, Mr. Jeff Chorman, Mr. John T. Hastings, Mr. Jordan Warfel, and Mr. John Williamson.

Nature of the Proceedings

This is an application for variances from the front yard, rear yard, and side yard setback requirements for existing and proposed structures.

Findings of Fact

The Board found that the Applicants are requesting the following variances:

1. A variance of 12 feet from the forty (40) feet front yard setback requirement for a proposed extension of an existing deck;
2. A variance of 5 feet from the five (5) feet side yard setback requirement on the north side for an existing deck;
3. A variance of 5 feet from the five (5) feet side yard setback requirement on the north side;
4. A variance of 5 feet from the five (5) feet rear yard setback requirement for an existing shed; and
5. A variance of 18 feet from the forty (40) feet front yard setback requirement for existing steps.

This application pertains to certain real property located at the east side of Peppers Corner Road approximately 192 feet north of Lizzard Hill Road (911 Address: 34461 Peppers Corner Road, Frankford); said property being identified as Sussex County Tax Map Parcel Number 134-18.00-40.00 ("the Property"). After a public 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 site plan of the Property dated January 9, 2020, photographs, construction drawings of the proposed addition, Findings of Fact, the application and record for Case No. 5686-1995, and a portion of the tax map of the area.
2. The Board found that the Office of Planning & Zoning received no letters in support of or in opposition to the Application.
3. The Board found that Ronald Masi was sworn in to testify about the Application.
4. The Board found that Mr. Masi testified that he is looking to extend his deck and put a roof over it. He noted that the deck would run the width of the house and is off the front of his house.
5. The Board found that Mr. Masi testified that the Property is only 100 feet deep by 75 feet wide. He noted that the lot size has not changed since he bought the Property but he has tried to purchase surrounding areas since he has maintained those areas as well.
6. The Board found that Mr. Masi testified that someone is building behind him and that he is trying to keep the Property up to standard.
7. The Board found that Mr. Masi testified that his steps come out slightly more than 8 feet.
8. The Board found that Mr. Masi testified that nothing around him can be developed due to wetlands.
9. The Board found that Mr. Masi testified that his additions will enhance the Property.



10. The Board found that Mr. Masi testified that the deck is 28 feet from the road.
11. The Board found that Mr. Masi testified that he placed all structures on the lot and that he demolished a prior house.
12. The Board found that Mr. Masi testified that he obtained permits for the new deck and his footer failed which is why he needs the variances.
13. The Board found that Mr. Masi testified that he relied on a previous survey and ended up placing his shed on neighbor's property. He noted that the shed is on posts and he would need a forklift to move it into compliance with the Code.
14. The Board found that Mr. Masi testified that there will only be one set of steps and no new steps with the deck expansion.
15. The Board found that Mr. Masi testified that the previous variance was done over the phone through contractors.
16. The Board found that Mr. Masi testified that there is a septic mound in the rear yard which limits his placement of all other structures.
17. The Board found that Mr. Masi testified that the deck in the rear yard was placed 10 years ago without a permit and is elevated about 1 ½ feet.
18. The Board found that Mr. Masi testified that the shed was placed in 2003 and he had no permit for that structure either.
19. The Board found that Mr. Masi testified that he has received no complaints about his structures.
20. The Board found that Mr. Masi testified that the other deck is about 2 feet high and was placed around the same time as the shed. He noted that there are 3 steps to that deck.
21. The Board found that Mr. Masi testified that the other deck is attached to the home and was placed at the same time as the house.
22. The Board found that Mr. Masi testified that he cannot do much with a rancher style home.
23. The Board found that Mr. Masi testified that the rear deck floats over top of the septic mound and he has no plans to enclose that.
24. The Board found that Mr. Masi testified that he and the contractors did not plan for the addition of the front porch when he constructed the house.
25. The Board found that no one appeared in support of or in opposition to the Application.
26. 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 Applicants failed to demonstrate that the Property was unique and that the uniqueness of the Property has created an exceptional practical difficulty. The lot is a rectangular lot measuring 100 feet by 75 feet with no unusual conditions. The lot was previously vacant and the Applicants constructed all structures on the lot, which consist of a house, shed, and four decks. Since the lot was vacant, the Applicants had a "blank slate" upon which to develop the Property. Rather than develop the Property in compliance with the Code, the Applicants have placed structures outside the building envelope and seek to expand existing structures into the setback areas. Notably, multiple structures were built without permits and encroach on to neighboring lands. The Applicants did not present evidence of unique topography or other conditions which convinced the Board that the Applicants would be unable to develop the Property in strict conformity with the Code or that those conditions have created an exceptional practical difficulty. Rather, the difficulty is clearly the result of the Applicants' development of the Property within the setback area. As such, the



Applicants have failed to demonstrate that there was some unique condition which has created the exceptional practical difficulty.

- b. The Applicants failed to prove that the Property could not be developed in strict conformity with the Sussex County Zoning Code. The Property has been previously developed with a house but the Applicants further developed the Property without building permits and have encroached into the setback areas as well as onto neighboring lands. Now, rather than comply with the Code, the Applicants propose additions which will also encroach into the setback areas. It is clear that the Applicants have chosen not to build in strict conformity with the Code rather than developing the lot to comply with the Code's setback requirements. While the location of the structures may not be the location the Applicants prefer, the Applicants failed to demonstrate that they could not otherwise comply with the Code's setback requirements. The Applicants are not entitled to have the structures in these locations. For these reasons, the Board finds that the Property could be developed in strict conformity with the Code and that the variances are not necessary to enable reasonable use of the Property.
- c. The Board finds that the Applicants are creating their own exceptional practical difficulty by proposing to construct and retain structures which do not fit within the building envelope. The Applicants' decision to construct these structures in these locations is the reason for the need for variances 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 lot is a rectangular lot without a unique condition that limits the Applicants' ability to reasonably develop the lot. The Board was not convinced that the variance requests were the product of a *need*. Instead, the variance requests appears to be the product of a *want* as the Applicants seek to build and retain structures as proposed for purposes of convenience, profit, and / or caprice. Since the Applicants can develop the Property in compliance with the Sussex County Zoning Code, the need for the variances is something created by the Applicants' wants rather than an unusual physical condition relating to the Property. The Applicants have thus created their own exceptional practical difficulty.
- d. Since the variances are not necessary to enable the reasonable use of the Property, the Board also finds that the variances requested are not the minimum variances necessary to afford relief. Mr. Masi testified that he wants the new addition to keep up with newer development in the area. The Board was not convinced by the Applicants of a need for these structures. Rather, the Board finds that no variance is needed to afford relief.

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 Mr. Travis Hastings, Mr. Jordan Warfel, and Mr. John Williamson. Dr. Kevin Carson and Mr. Jeffrey Chorman voted against the Motion to deny the variance application.

BOARD OF ADJUSTMENT  
OF SUSSEX COUNTY



John Williamson  
Chair

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

Date April 18, 2022