

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: ANDREW GOLDBERGER & SUSAN BEHAN

(Case No. 12457)

A hearing was held after due notice on August 3, 2020. 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 18.9 feet from the thirty (30) feet front yard setback requirement for proposed steps. This application pertains to certain real property located on the west side of Barney Lane, approximately 952 feet south of Double Bridges Road (911 Address: 34750 Barney Lane, Frankford); said property being identified as Sussex County Tax Map Parcel Number 1-34-19.00-343.00. After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, the findings of fact for Case No. 12274, the previous variance application, photographs, an aerial photograph of the Property, a survey of the Property dated April 24, 2020, a proposed site plan dated December 31, 2018, 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 Andrew Goldberger and Susan Behan were sworn in to give testimony about the Application.
4. The Board found that Mr. Goldberger testified that, in 2019, the Board granted a variance for the front porch. At that time, the steps were to project into the side yard but the house was built closer to the south side of the Property and therefore, the steps would project too close to the creek. According to Mr. Goldberger, the surveyor moved the pins for the location of the house 4 feet to the south without his knowledge. Originally, the house was to be located 11 feet from the north property line but the shifting of the pins caused the house to be located 15.2 feet from the north property line. With the house being so close to the south side of the lot, steps to the side of the house would project into Miller Creek so the steps had to be moved elsewhere.
5. The Board found that Mr. Goldberger testified that the development was created in 1968 with a cul-de-sac that was never installed. According to Mr. Goldberger, there is no entity, such as a homeowners association, to create the physical cul-de-sac. The cul-de-sac is adjacent to the front of the lot.
6. The Board found that Mr. Goldberger testified that the house has to be elevated to meet FEMA flood regulations. The Property is adjacent to Miller Creek.
7. The Board found that Mr. Goldberger testified that the Board previously determined that the Property had a unique size and shape.
8. The Board found that Mr. Goldberger testified that the Property is irregular in shape due to being bounded by Barney Lane on the east, the lagoon on the west, and Millers Creek on the south.
9. The Board found that Mr. Goldberger testified that the Property is located at the end of Barney Lane in the location of a proposed cul-de-sac that was not built.

10. The Board found that Mr. Goldberger testified that the house was built to meet the prior variance approval but there was an error with the surveyor.
11. The Board found that Mr. Goldberger testified that an elevation certificate determined that the house needed to be elevated to meet FEMA flood regulations therefore creating the need for additional steps which project an additional 5 feet.
12. The Board found that Mr. Goldberger testified that the builder was unaware of the encroachment until the final construction survey.
13. The Board found that Mr. Goldberger testified that the Property cannot be developed in strict conformity with the Sussex County Zoning Code.
14. The Board found that Mr. Goldberger testified that the parcel's shape and size was previously determined to restrict construction of a typical house plan of similar character to others nearby.
15. The Board found that Mr. Goldberger testified that, if the cul-de-sac did not exist on paper, there would not be a need for the variance.
16. The Board found that Mr. Goldberger testified that the Property narrows to the rear and the buildable width of the rear of the lot is only 26.6 feet.
17. The Board found that Mr. Goldberger testified that it is necessary for the steps to project to the front of the lot as this is the only entrance to the dwelling.
18. The Board found that Mr. Goldberger testified that the exceptional practical difficulty was not created by the Applicants but by the misplacement of the house. The Applicants discovered the misplacement of the house when the pilings were placed but it was cost prohibitive to move the pilings.
19. The Board found that Mr. Goldberger testified that the steps will not alter the essential character of the neighborhood but will improve it.
20. The Board found that Mr. Goldberger testified that the variance requested is the minimum variance to afford relief and to allow the steps to remain in the current location.
21. The Board found that Mr. Goldberger testified that the house sets back farther from the road than neighboring homes and there are a mix of homes in the neighborhood.
22. The Board found that Mr. Goldberger testified that moving the steps to the other side would block boat storage and that the steps could not be placed to the rear due to the layout of the house. He also testified that the steps cannot be turned either.
23. The Board found that Mr. Goldberger testified that there is flooding from Miller Creek and rip rap was needed along Miller Creek.
24. The Board found that Ms. Behan testified that, when the pilings were installed, they realized that they were in the wrong place and they spoke with the builder but it was cost prohibitive to move the pilings.
25. The Board found that Ms. Behan testified that this practical difficulty was not created by the Applicant but by the builder who placed the dwelling too far south on the lot.
26. The Board found that Ms. Behan testified that the builder agreed to reinforce the land.
27. The Board found that Ms. Behan testified that they were unaware that they needed a second variance for the steps until after the house was completed.
28. The Board found that no one appeared in support of or opposition to the Application.
29. 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 its odd shape, size, and flooding problems. The Property is a small lot consisting of only 6,312 square feet and borders two bodies of water. The rear of the lot is significantly narrow as it is only 34.45 feet wide. The Property is also subject to flooding. These conditions have created an unusually small building envelope that is further limited since the Property is located at the end of a paper cul-de-sac which does

not physically exist. Furthermore, the Property is served by well water and the well is located in the building envelope thereby further reducing the buildable area. These unique conditions have created an unnecessary hardship and exceptional practical difficulty for the Applicants who seeks to retain the existing steps on the lot.

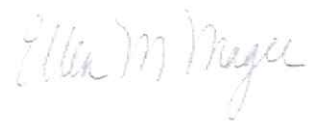
- b. The unnecessary hardship and exceptional practical difficulty are not being created by the provisions of the Sussex County Zoning Code.
- c. Due to the uniqueness of the lot, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property has a unique size and shape and the buildable area thereof is limited due to its size, shape, flooding problems, and location of the well. The Applicants seek to retain steps on the lot but are 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 a reasonably sized set of steps to remain on the lot. The Board is convinced that the shape and location of these steps are also reasonable, which is confirmed when reviewing the survey provided by the Applicants.
- d. The unnecessary hardship and exceptional practical difficulty was not created by the Applicants. The Applicants did not create the unusual size and shape of the Property. The lot was created in 1967 prior to the enactment of the Sussex County Zoning Code. These conditions have resulted in a limited building envelope on the Property and the small and unusually shaped building envelope has created the exceptional practical difficulty and unnecessary hardship. The small building envelope was further limited by the location of the well. The unique characteristics of the Property are clear when reviewing the survey. Furthermore, the surveyor and builder located the home in the wrong location and, due to that error, the steps are closer to the road than they would otherwise be located if the house was placed in its correct location. The Board is convinced that the exceptional practical difficulty and unnecessary hardship were not created by the Applicants but was created by the lot's unique characteristics and the builder and surveyor errors.
- 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 Board is convinced that the steps will have no effect on the character of the neighborhood. The steps will protrude into the front yard setback but the front yard is reduced by a cul-de-sac which does not exist. As such, the front yard of the Property appears larger than it actually is. It is likely that the encroachment would not be noticeable since the cul-de-sac has not been completed. No evidence was presented that the variance would somehow alter the essential character of the neighborhood.
- 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 Applicants have demonstrated that the variance sought will allow the Applicants to retain the existing steps on the Property. No additions or modifications to the steps 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 were Dr. Kevin Carson, Mr. Jeffrey Chorman, Ms. Ellen Magee, Mr. Brent Workman, and Mr. John Williamson. No Board Member voted against the motion to approve 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 5, 2020.