

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

**IN RE: LISA LAWSON**

**(Case No. 11240)**

A hearing was held after due notice on August 5, 2013. The Board members present were: Mr. Dale Callaway, Mr. Jeff Hudson, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for a variance from the side yard setback requirement.

Findings of Fact

The Board found that the Applicant was seeking a variance of 0.6 feet from the fifteen (15) feet side yard setback requirement. The Applicant has requested that the aforementioned requested variance be granted as it pertains to certain real property located southeast of Gills Neck Road (Road 267) east of Black Marlin Circle, being Lot 36 within Wolfe Pointe development; said property being identified as Sussex County Tax Map Parcel Number 3-35-9.00-144.00. After a hearing, the Board made the following findings of fact:

1. Amy Warrick was worn in to testify on behalf of the Application.
2. Jon Horner, Esquire, appeared on behalf of the Applicant to present the Application.
3. The Board found that Mr. Horner stated that the home was built in 2007 and that Certificates of Compliance and Occupancy were issued by Sussex County.
4. The Board found that Mr. Horner stated that the Applicant purchased the home in 2007 and the Applicant's settlement attorney and lender advised her that she did not need a survey at the time she purchased the Property because the Certificate of Compliance was issued.
5. The Board found that Mr. Horner stated that the Applicant has title insurance.
6. The Board found that Mr. Horner stated that the Applicant recently found out that the home violates the side yard setback by 0.6 feet but the footprint of the dwelling has not changed since it was purchased in 2007.
7. The Board found that Mr. Horner stated that the permanent physical structure of the dwelling cannot be moved without exceptional practical difficulty.
8. The Board found that Mr. Horner stated that the Property cannot strictly conform with the Zoning Ordinance without a variance.
9. The Board found that Mr. Horner stated that the adjacent homeowner is in support of the Application.
10. The Board found that Mr. Horner stated that the variance is necessary to enable reasonable use of the Property.
11. The Board found that Mr. Horner stated that the home has been a part of the community since 2007 and will not alter the essential character of the neighborhood.
12. The Board found that Mr. Horner stated that the variance is the least modification possible to afford relief.
13. The Board found that Ms. Warrick, under oath, confirmed the statements of Mr. Horner.
14. The Board found that Ms. Warrick testified that the dwelling was built as a spec home and that the builder has since gone out of business.
15. The Board found that there were no parties present in support of or in opposition to the Application.

16. The Board found that the Office of Planning and Zoning received one (1) letter in support of the Application.
17. Based on the findings above and the testimony presented at the public hearing and the public record, the Board determined that the Application met the standards for granting a variance. The variance sought represents the least possible modification of the regulation at issue. The need for a variance appears to be the result of a surveying error. There is a uniqueness to the Property since the Applicant purchased the Property not knowing that a variance was necessary to conform to the zoning regulations. The variance sought is necessary to enable reasonable use of the Property. The difficulty was not created by the Applicant. The variance will not alter the essential character of the neighborhood. The requested variance is the minimum variance necessary to afford relief.

The Board approved the variance application finding that it met the standards for granting a variance.

Decision of the Board

Upon motion duly made and seconded, the Application was approved. The Board Members voting to approve the Application were Mr. Dale Callaway, Mr. Jeff Hudson, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman. No Member voted against the Motion to Approve the Application.

BOARD OF ADJUSTMENT  
OF SUSSEX COUNTY

  
Dale Callaway  
Chairman

If the use is not established within one (1) year from the date below the application becomes void.

Date September 10, 2013