

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: CHARLES R. TOLLINCHE

(Case No. 11260)

A hearing was held after due notice on September 9, 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 one (1) foot from the fifteen (15) feet side yard setback requirement for an existing dwelling. The Applicant has requested that the aforementioned requested variance be granted as it pertains to certain real property southwest of Road 273 (Country Club Road) being south of White Oak Road, 225 feet southwest of West Side Drive, and being Lot 41 Block 19 within Rehoboth Beach Yacht and Country Club development; said property being identified as Sussex County Tax Map Parcel Number 3-34-19.00-72.00. After a hearing, the Board made the following findings of fact:

1. William Schab, Esquire, appeared on behalf of the Applicant to present the Application.
2. The Board found that Mr. Schab stated that the Applicant was unable to attend the hearing as he lives in New York and if needed an affidavit can be obtained and submitted.
3. The Board found that Mr. Schab made statements about the Property and the Application.
4. The Board found that no parties appeared in support of or in opposition to the Application.
5. The Board voted to leave the record open for the limited purpose of allowing the Applicant to submit an affidavit regarding the Application.
6. On October 21, 2013, the Board reviewed a sworn affidavit of Charles Tollinche which stated:
 - a. He is the owner of the Property.
 - b. His settlement survey showed that the back left corner of the home is fourteen (14) feet rather than the required fifteen (15) feet from the side property line and that the Sellers were unaware of this problem.
 - c. He could not postpone settlement to first obtain a variance because of his financing and that the Sellers agreed to pay for the costs of applying for, and hopefully obtaining, the variance after settlement.
 - d. He did not build the home so he did not create the problem.
 - e. The situation is unique in that the Property has an odd shape and the builder obviously tried to build the home parallel to the side property line but missed by a small amount.
 - f. The encroachment has not adversely affected any other person or property for all the years it has existed.
 - g. The character of the neighborhood will not be adversely affected if the variance is granted because this very minimal encroachment has existed for many years without issue.
 - h. It would be very expensive to try to correct the encroachment because it would involve the removal of the corner of his home.

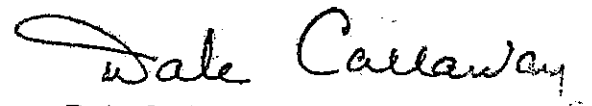
- i. If the variance is not granted, he will have the additional hardship that he may not be able to sell his home because of the encroachment.
 - j. He planned to attend the original hearing but was unable to do so due to last minute changes in his work schedule.
 - k. He is a medical doctor practicing in New York City.
7. 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 odd shaped lot makes it unique. The Property is located on a cul-de-sac. The Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code. The difficulty was not created by the Applicant. The variance will not alter the essential character of the neighborhood. The variance sought 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, and Mr. Brent Workman. No Member voted against the Motion to Approve the Application. Mr. Norman Rickard was not present at the Board hearing on October 21, 2013, and did not participate in the vote.

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 December 10, 2013