

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

**IN RE: VOYD HARMON & BETTY HARMON**

**(Case No. 11409)**

A hearing was held after due notice on June 16, 2014. 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 front yard setback requirement.

Findings of Fact

The Board found that the Applicants were seeking a variance 5.6 feet from the forty (40) feet front yard setback requirement for an existing addition. The Applicants have requested that the aforementioned requested variance be granted as it pertains to certain real property located northeast of Road 310A (Warwick Road) 0.5 mile southeast of Route 24 (John J. Williams Highway) (911 Address: 28307 Warwick Road, Millsboro, Delaware); said property being identified as Sussex County Tax Map Parcel Number 2-34-33.00-51.00. After a hearing, the Board made the following findings of fact:

1. The Board found that the Office of Planning & Zoning received no correspondence regarding the Application.
2. Theresa Harmon and Brad Whaley were sworn in to testify on behalf of the Application.
3. The Board found that Mr. Whaley testified that he is the Director of the Sussex County Community Development Department ("the Department") and that the Department helped the Applicants obtain financing for the construction of an addition to their home.
4. The Board found that Mr. Whaley testified that the Property is unique because the dwelling was constructed prior to the enactment of the Sussex County Zoning Code ("the Code").
5. The Board found that Mr. Whaley testified that the existing dwelling does not conform with the Code.
6. The Board found that Mr. Whaley testified that the Delaware Department of Transportation ("DelDOT") extended the easement on the Property after construction of the dwelling.
7. The Board found that Mr. Whaley testified that the Applicants were unaware of the encroachment until receiving notice from the Planning and Zoning Department.
8. The Board found that Mr. Whaley testified that the structure has the appearance of meeting the required setbacks and that the builder was not aware of the encroachment.
9. The Board found that Mr. Whaley testified that the location of the non-conforming dwelling and the DelDOT easement make the Property unique.
10. The Board found that Mr. Whaley testified that the variance will enable reasonable use of the Property.
11. The Board found that Mr. Whaley testified that the variance will not alter the character of the neighborhood as the area consists of similar, single family homes.
12. The Board found that Mr. Whaley testified that the use is not detrimental to the public welfare.
13. The Board found that Mr. Whaley testified that the variance will not impair the uses or development of adjacent and neighboring properties.
14. The Board found that Mr. Whaley testified that the difficulty was not created by the Applicants.

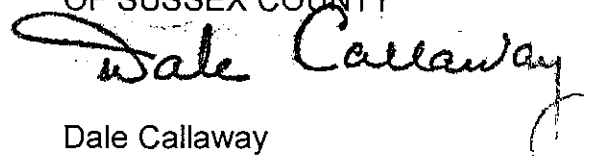
15. The Board found that Mr. Whaley testified that the Department directed the construction of the addition.
16. The Board found that Mr. Whaley testified that the variance is the minimum variance necessary to afford relief.
17. The Board found that Mr. Whaley testified that the variance represents the least modification of the regulation at issue.
18. The Board found that Mr. Whaley testified that the contractor obtained a permit for the construction of the addition on the side of the house.
19. The Board found that Mr. Whaley testified that the encroachment was discovered after the addition was built.
20. The Board found that Mr. Whaley testified that the addition does not protrude further into the front yard setback area more than the original dwelling.
21. The Board found that one (1) party appeared in support of the Application.
22. The Board found that no parties appeared in opposition to the Application.
23. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, the Board determined that the Application met the standards for granting a variance. The Property is unique due the existence of the DeIDOT easement and because the dwelling was constructed prior to the enactment of the Code. The variance is necessary to enable reasonable use of the Property. The difficulty was not created by the Applicants because the dwelling was built prior to the enactment of the Code and prior to the expansion of the DeIDOT easement. The Applicants also relied on their builder to obtain all necessary approvals so that the addition would comply with the Code. The variance will not alter the essential character of the neighborhood. The variance sought is the minimum variance necessary to afford relief. The variance requested represents the least modification of the regulation at issue

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 August 5, 2014