

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: LORETTA M. BEMESDERFER

(Case No. 11421)

A hearing was held after due notice on July 21, 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 variances from the side yard and front yard setback requirements.

Findings of Fact

The Board found that the Applicant was seeking a variance of 17.8 feet from the thirty (30) feet front yard setback requirement and a variance of 3.9 feet from the ten (10) feet side yard setback requirement for an existing dwelling. The Applicant has requested that the aforementioned requested variances be granted as they pertain to certain real property located northeast of Route 5 (Oak Orchard Road) aka Road 297 and being northwest of Mercer Avenue, 220 feet northeast of Paul Street (911 Address: 33277 Mercer Avenue, Millsboro, Delaware); said property being identified as Sussex County Tax Map Parcel Number 2-34-35.05-93.00. 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. Kim Broomer was sworn in to testify on behalf of the Application and Norman Barnett, Esquire, appeared on behalf of the Applicant.
3. The Board found that Ms. Broomer testified that she is the Applicant's daughter and has power of attorney for the Applicant.
4. The Board found that Ms. Broomer testified that the Property is under a contract for sale pending the Board's decision.
5. The Board found that Ms. Broomer testified that the Applicant purchased the Property in 1979 and that the location of the dwelling has not changed since the Applicant purchased the Property.
6. The Board found that Mr. Barnett stated that the dwelling was built prior to the enactment of the Sussex County Zoning Code and is a non-conforming use.
7. The Board found that Mr. Barnett stated that the previous owner added onto the existing dwelling in 1977 after obtaining a building permit and that there was no survey completed at that time.
8. The Board found that Mr. Barnett stated that the Applicant obtained a building permit in 1991 to replace an existing deck and that a Certificate of Compliance was issued for the deck.
9. The Board found that Ms. Broomer testified that the Applicant cannot purchase additional property to bring the Property into compliance with the Sussex County Zoning Code.
10. The Board found that Ms. Broomer testified that it would be a hardship to bring the Property into compliance.
11. The Board found that Ms. Broomer testified that the Property cannot be sold in its current condition.
12. The Board found that Ms. Broomer testified that the variances will not alter the character of the neighborhood and that the use will not be detrimental to the public welfare.
13. The Board found that Ms. Broomer testified that the variances are the minimum variances to afford relief and that the variances represent the least modifications of the regulations at issue.
14. The Board found that Ms. Broomer, under oath, confirmed the statements made by Mr. Barnett.

15. The Board found that no parties appeared in support of or in opposition to the Application.
16. 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 because it is only fifty (50) feet wide and has a non-conforming dwelling which existed prior to the enactment of the Sussex County Zoning Code. The variances are necessary to enable reasonable use of the Property. The dwelling would need to be moved in order to comply with the Sussex County Zoning Code and would be a hardship for the Applicant. The difficulty was not created by the Applicant. The dwelling was in its current location when she purchased the Property many years ago. The variances will not alter the essential character of the neighborhood. The dwelling has been in its present location for many years. The variances sought are the minimum variances 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 9, 2014