

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: EDWARD J. SATTLER and MARY ANN SATTLER

(Case No. 11494)

A hearing was held after due notice on December 1, 2014. The Board members present were: Mr. Dale Callaway, Mr. Jeff Hudson, Mr. John Mills, and Mr. Norman Rickard.

Nature of the Proceedings

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

Findings of Fact

The Board found that the Applicants were seeking a variance of 0.3 feet from the ten (10) feet rear yard setback requirement for an existing dwelling. This application pertains to certain real property located southeast of Road 351 (Clubhouse Road) and being south of Hickman Drive 250 feet west of Bridge Lane and being Lot 3 Block B Section 1 of White's Creek Manor Subdivision (911 Address: 758 Hickman Drive, Ocean View, DE); said property being identified as Sussex County Tax Map Parcel Number 1-34-12.00-894.00). After a hearing, the Board made the following findings of fact:

1. The Board reviewed copies of the Application, the tax map of the area, and a survey of the Property dated September 10, 2014.
2. The Board found that the Office of Planning and Zoning received no letters in regarding the Application.
3. Edward Sattler was sworn in to testify the Application and Manaen Robinson, Esquire, presented the Application on behalf of the Applicants
4. The Board found that Mr. Robinson stated that the Applicants purchased the Property on September 24, 2014 and that a survey completed for settlement showed the encroachment into the rear yard setback.
5. The Board found that Mr. Robinson stated that the dwelling was built in the mid-1980s and that the Certificate of Compliance was issued in 1985.
6. The Board found that Mr. Robinson stated that a portion of the dwelling would have to be removed to comply with the Sussex County Zoning Code.
7. The Board found that Mr. Robinson stated that the variance is necessary to enable reasonable use of the Property.
8. The Board found that Mr. Robinson stated that the violation was not created by the Applicants.
9. The Board found that Mr. Robinson stated that the dwelling has been in its present location for 30 years.
10. The Board found that Mr. Robinson stated that the variance will not alter the character of the neighborhood.
11. The Board found that Mr. Robinson stated that the variance requested is the minimum variance to afford relief.
12. The Board found that Mr. Sattler, under oath, confirmed the statements made by Mr. Robinson.
13. The Board found that two (2) parties appeared in support of the Application.
14. The Board found that no parties appeared in opposition to the Application.
15. 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.

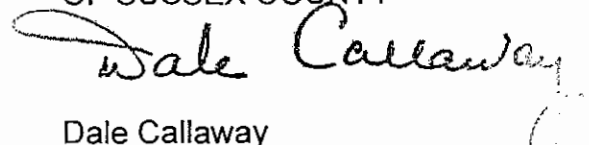
- a. The situation is unique because the dwelling was placed on the Property approximately 30 years ago by a prior owner and a Certificate of Compliance was issued in 1985 which evidenced that the dwelling was believed to be in compliance with the Sussex County Zoning Code at that time. Recently, however, the Applicants learned about the need for the variance when a survey was obtained as part of the process of their purchase of the Property. The dwelling encroaches into the rear setback area by mere inches.
- b. The variance is necessary to enable reasonable use of the Property because the Applicants would be required to remove a portion of the dwelling in order to comply with the Sussex County Zoning Code. The dwelling appears to be of a reasonable size and removal of the small portion of the dwelling would create an exceptional practical difficulty and an unnecessary hardship on the Applicants.
- c. The exceptional practical difficulty and unnecessary hardship were not created by the Applicants. The dwelling was placed on the Property by a prior owner approximately 30 years ago and the unrebutted testimony evidences that the dwelling was not been moved by the Applicants since their purchase of the Property in September 2014.
- d. The variance will not alter the essential character of the neighborhood. The dwelling has been in its current location for many years and is only inches into the rear yard setback area. The de minimis nature of the encroachment indicates that it has had little to no impact on the neighborhood. Furthermore, no evidence was presented which would indicate that the location of the dwelling somehow altered the character of the neighborhood.
- e. The variance sought is the minimum variance necessary to afford relief as the variance will allow the home to remain in its current location. No additional variance is requested to expand the home or to further encroach into the setback area than is necessary.

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 Mr. Dale Callaway, Mr. Jeff Hudson, Mr. John Mills, and Mr. Norman Rickard. No Board Members voted against the Motion to approve the variance application. Mr. Brent Workman did not participate in the discussion or vote of this 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 January 27, 2015.