

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY
IN RE: HEATH BRADLEY WEAVER and JOHN JOSEPH MACKEY

(Case No. 11499)

A hearing was held after due notice on December 15, 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 of 0.4 feet from the thirty (30) feet front yard setback requirement for an existing dwelling. This application pertains to certain real property located northwest of Eleanor Lee Lane East, approximately 1,150 feet northeast of Corkran Boulevard and being Lot 47 in Canal Corkran Residential Planned Community (911 Address: 29 Eleanor Lee Lane, Rehoboth Beach, DE); said property being identified as Sussex County Tax Map Parcel Number 3-34-13.00-1344.00.

1. The Board was given copies of the Application, a portion of the tax map of the area, a survey of the Property dated December 18, 2002, and an undated survey of the Property.
2. The Board found that the Office of Planning and Zoning received one (1) letter in support of the Application and no letters in opposition to the Application.
3. Andrew Staton was sworn in to testify the Application and Chad Meredith, Esquire, presented the Application on behalf of the Applicants. Mr. Meredith submitted a photograph of the Property for the Board to review.
4. The Board found that Mr. Meredith stated that the Property is located in the Canal Corkran development.
5. The Board found that Mr. Meredith stated that a survey completed in 2002 shows no encroachments but a more recent survey shows an encroachment into the front yard setback.
6. The Board found that Mr. Meredith stated that the Certificate of Compliance was issued in 2003.
7. The Board found that Mr. Meredith stated that the Applicants did not build the dwelling nor did they own the Property in 2003.
8. The Board found that Mr. Meredith stated that the encroachment cannot be noticed by the naked eye.
9. The Board found that Mr. Meredith stated that neighboring homes are similarly situated.
10. The Board found that Mr. Meredith stated that the Property has unique circumstances and conditions.
11. The Board found that Mr. Meredith stated that the two (2) surveys create a unique situation.
12. The Board found that Mr. Meredith stated that the need for the variance was not discovered for more than 10 years.
13. The Board found that Mr. Meredith stated that the variance is necessary to enable reasonable use of the Property.
14. The Board found that Mr. Meredith stated that there would be a cost to bring the home into compliance with the Code with little to no benefit to neighboring properties.
15. The Board found that Mr. Meredith stated that the Property is already developed.

16. The Board found that Mr. Meredith stated that an exceptional practical difficulty exists and was not created by the Applicants.
17. The Board found that Mr. Meredith stated that the variance will not alter the essential character of the neighborhood.
18. The Board found that Mr. Meredith stated that the variance will not permanently impair the uses of neighboring properties and that the variance is not detrimental to the public welfare.
19. The Board found that Mr. Meredith stated that the variance is the minimum variance to afford relief and that the variance represents the least modification of the regulation at issue.
20. The Board found that Mr. Staton testified that he has been a real estate agent in the area for twelve (12) years and that he is familiar with the Property.
21. The Board found that Mr. Staton testified that there will not be an adverse effect to the values of neighboring properties.
22. The Board found that Mr. Staton testified that he confirms the statements made by Mr. Meredith as true and correct.
23. The Board found that no parties appeared in support of or in opposition to the Application.
24. 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 Property and the situation are unique. A prior owner constructed the dwelling and obtained a survey which showed the dwelling was compliant with the Sussex County Zoning Code. The prior owner also obtained a Certificate of Compliance which further confirmed that the dwelling complied with the Code. Over ten (10) years later, however, a new survey showed that the dwelling did not comply with the Code. This situation is quite unique and has created an exceptional practical difficulty for the Applicants.
 - b. The variance is necessary to enable reasonable use of the Property. The dwelling has been in its current location since 2003 and the variance will allow the dwelling to remain in that location. The Property is already developed and it would be a substantial hardship for the Applicants to bring the dwelling into compliance with the Sussex County Zoning Code because a portion of the dwelling would have to be removed to do so. Since the dwelling is only inches away from the building setback line, the benefit of such renovation would be negligible at best.
 - c. The exceptional practical difficulty was not created by the Applicants. The dwelling was constructed by a prior owner and a survey prepared at the time of construction indicates that the dwelling appeared to be in compliance with the Sussex County Zoning Code at that time. The encroachment was only discovered years later when a new survey was performed. The Applicants did not construct the dwelling and, thus, did not create the difficulty. The prior owner also appears to have been unaware of the encroachment.
 - d. The variance will not alter the essential character of the neighborhood nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare. The dwelling has been in its current location since at least 2003 and no evidence was presented that the dwelling has altered the character of the neighborhood or somehow been detrimental to the neighborhood. The testimony presented also demonstrates that other homes in the neighborhood are similarly situated and that the variance will not alter property values in the neighborhood. The approval of this variance allows the existing dwelling to remain in its locations.

- e. The variance sought is the minimum variance necessary to afford relief and represents the least modification of the regulation at issue. The Applicant has demonstrated that the variance requested will allow the existing dwelling to remain and that no additions which require a variance are being sought.

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, Mr. Norman Rickard, and Mr. Brent Workman. No Board Members voted against the Motion to approve the variance 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 February 18, 2015.