

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: PEGGY M. LEE & RALPH W. WEIS

(Case No. 11509)

A hearing was held after due notice on January 5, 2015. 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 Applicants were seeking a variance of 2.1 feet from the fifteen (15) feet side yard setback requirement for an existing dwelling. This application pertains to certain real property located north of Road 207 (Fitzgeralds Road) approximately 900 feet east of Route 42 (Union Church Road) (911 Address: 16443 Fitzgeralds Road, Lincoln, DE); said property being identified as Sussex County Tax Map Parcel Number 1-30-6.00-44.01.

1. The Board was given copies of the Application, a portion of the tax map of the area, and a survey of the Property dated October 27, 2014.
2. The Board found that the Office of Planning and Zoning had not received any correspondence in support of or in opposition to the Application.
3. Peggy Lee and Ralph Weis were sworn in to testify about the Application.
4. The Board found that Mr. Weis testified that the attached garage encroaches into the side yard setback requirement.
5. The Board found that Mr. Weis testified that the Applicants purchased the Property in 2005 and were not aware of the encroachment until a recent survey was completed.
6. The Board found that Mr. Weis testified that the Property is being sold.
7. The Board found that Ms. Lee testified that the dwelling and attached garage were built between 1991 and 2005.
8. The Board found that Ms. Lee testified that she purchased the Property in 2005 and that she did not obtain a survey at that time.
9. The Board found that Mr. Weis testified that, due to the angle of the front property line and the existing road, the dwelling was constructed at an angle.
10. The Board found that Mr. Weis testified that the angled property line creates a uniqueness to the Property.
11. The Board found that Mr. Weis testified that the Property cannot otherwise be developed in strict conformity.
12. The Board found that Mr. Weis testified that the variance is necessary enable reasonable use of the Property.
13. The Board found that Mr. Weis testified that the difficulty was not created by the Applicants.
14. The Board found that Mr. Weis testified that the variance does not alter the essential character of the neighborhood.
15. The Board found that Mr. Weis testified that the houses in the neighborhood are located far apart.
16. The Board found that Mr. Weis testified that the variance is the minimum variance to afford relief.
17. The Board found that no parties appeared in support of or in opposition to the Application.

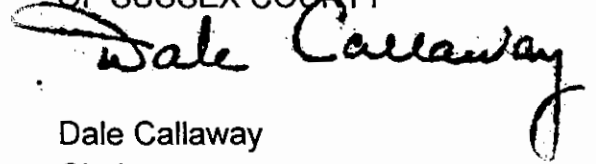
18. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, which the Board found credible, persuasive, and un rebutted, the Board determined that the application met the standards for granting a variance. The findings below further support the Board's decision to approve the Application.
- a. The Property is unique due to the unique angle of the front property line. The dwelling and attached garage have been constructed to largely parallel the angle of the front property line which has caused the dwelling to sit in an odd position on the lot. The unique angle of the front property line has created an exceptional practical difficulty.
 - b. The Property cannot be developed in strict conformity with the Sussex County Zoning Code. The existing dwelling and attached garage were constructed by a prior owner and the Applicants were unaware that the existing dwelling and garage did not comply with the side yard setback requirement until recently. The existing dwelling and garage are reasonable and it is clear that the variance is necessary to enable the reasonable use of the Property.
 - c. The exceptional practical difficulty was not created by the Applicants. The dwelling and attached garage were placed on the Property by a prior owner and the Applicants were unaware of the encroachment when they purchased the Property. The unique angle of the front property line also has created an exceptional practical difficulty because the shape of the dwelling would need to be placed at an odd angle on the Property in order to parallel the Fitzgerald's Road. This unique placement is clear when reviewing the survey. The difficulty was certainly not something created by the Applicants.
 - 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 and garage have been in their current location for quite some time and no evidence was presented that the encroachment into the side yard setback area has altered the character of the neighborhood or somehow been detrimental to the neighborhood. The testimony from Mr. Weis demonstrates that the neighboring homes are located away from this property so there appears to be no detrimental impact to those properties.
 - e. The variance sought is the minimum variance necessary to afford relief and the variance requested represent the least modification possible of the regulation at issue. The Applicants have demonstrated that the side yard variance requested will allow the existing dwelling to remain on its existing foundation and that no additions are being constructed which would cause the need for an additional variance.

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 March 3, 2015