

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

**IN RE: ROBERT J. CONNERY and JANET C. CONNERY**

**(Case No. 11520)**

A hearing was held after due notice on February 2, 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 rear yard setback requirement.

Findings of Fact

The Board found that the Applicants were seeking a variance of 2.5 feet from the twenty (20) feet rear yard setback requirement for an existing lean-to on a detached garage. This application pertains to certain real property located north of Route 26 (Vines Creek Road) and being southeast of Valley Court, approximately 139.28 feet northeast of Waverly Drive and more specifically Lot 16 within Waverly Subdivision (911 Address: 32298 Valley Court, Dagsboro, DE); said property being identified as Sussex County Tax Map Parcel Number 1-34-10.00-340.00.

1. The Board was given copies of the Application, a portion of the tax map of the area, a survey of the Property dated November 18, 2014, and a photograph of the Property.
2. The Board found that the Office of Planning & Zoning did not receive any correspondence regarding the Application.
3. Robert Connery and Janet Connery were sworn in to testify about the Application and Raymond Tomasetti, Esquire, presented the case on behalf of the Applicants.
4. The Board found that Mr. Tomasetti stated that the Applicants recently purchased the Property.
5. The Board found that Mr. Tomasetti stated that the previous owners built the lean-to. The lean-to was attached to the existing detached garage for safety reasons and the lean-to has an existing plywood floor.
6. The Board found that Mr. Tomasetti stated that the Property has a unique diamond shape.
7. The Board found that Mr. Tomasetti stated that the garage and lean-to were placed in their existing location due to the location of the existing septic system and well on the Property.
8. The Board found that Mr. Tomasetti stated that the variance is necessary to enable reasonable use of the Property.
9. The Board found that Mr. Tomasetti stated that a safety issue would likely arise if the lean-to was detached from the garage.
10. The Board found that Mr. Tomasetti stated that the lean-to was built sometime after 2002 and has been in its present location for many years.
11. The Board found that Mr. Tomasetti stated that the difficulty was not created by the Applicants but by a prior owner.
12. The Board found that Mr. Tomasetti stated that the variance will not alter the character of the neighborhood and the variance will not impair the uses or development of adjacent property.
13. The Board found that Mr. Tomasetti stated that the variance requested is the minimum variance to afford relief and represents the least modification of the regulation at issue.
14. The Board found that Mr. Tomasetti stated that the use is not detrimental to the public welfare.

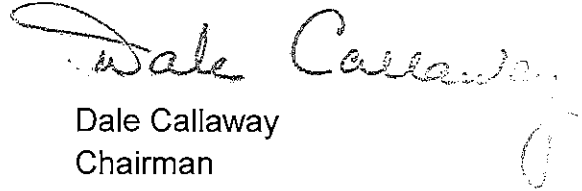
15. The Board found that Mr. & Mrs. Connery, under oath, confirmed the statements made by Mr. Tomasetti.
16. The Board found no parties appeared in support of or in opposition to the Application.
17. Based on the findings above and the testimony and evidence presented at the public hearing and the public 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 its unusual shape. The Property has a narrow front yard and a odd angle in the rear yard. The Property also has a septic system and well which limit the placement of the lean-to and garage. The unique characteristics of this Property have created an exceptional practical difficulty for the Applicants.
  - b. Due to the unique shape of the lot, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Applicants seek to retain an existing lean-to placed on the Property by a prior owner. The Applicants have legitimate safety concerns if the lean-to were to be removed. The lean-to cannot be placed elsewhere on the lot due to the lot's unique shape and the location of the well and septic system. The Board is convinced that the lean-to is reasonable and that the variance is necessary to enable the reasonable use of the Property. The survey attached to the Application confirms that the lean-to is reasonable in size, shape, and location.
  - c. The exceptional practical difficulty was not created by the Applicants. The Applicants only recently purchased the Property and did not create is unusual shape. The shape of the Property, along with the location of the well and septic systems which were not placed by the Applicants, have created the exceptional practical difficulty. The unique characteristics of the Property are clear when reviewing the survey.
  - 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 lean-to has been in its location for quite some time without complaint from neighbors. No evidence was presented which would indicate that the variance would somehow alter the essential character of the neighborhood or be detrimental to the public welfare.
  - 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 the variance will allow the existing lean-to to remain in its current location and no additional variance is required.

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 April 7, 2015.