

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: FRANCES KATHLEEN WASLEY, ET AL.

(Case No. 11535)

A hearing was held after due notice on March 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 front yard setback requirement.

Findings of Fact

The Board found that the Applicant was seeking a variance two (2) feet from the thirty (30) feet front yard setback requirement for an existing dwelling. This application pertains to certain real property located south of Route 54 (Lighthouse Road) and being northeast of Salty Way West approximately 258 feet northwest of Salty Way East and being more specifically Lot 66 within Keen-wik West Community (911 Address: 37803 Salty Way West, Selbyville, DE); said property being identified as Sussex County Tax Map Parcel Number 5-33-19.07-33.00.

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 December 14, 2014
2. The Board found that the Office of Planning & Zoning did not receive any correspondence regarding the Application.
3. Shannon Carmean Burton, Esquire, presented the case on behalf of the Applicant. Mrs. Burton submitted an affidavit of Frances Kathleen Wasley along with a copy of the survey and pictures of the Property.
4. The Board found that the affidavit of Ms. Wasley confirms that the Applicant acquired title to the Property following the passing of her father in May 2014 and that her father acquired title to the Property in 1998.
5. The Board found that the affidavit of Ms. Wasley confirms that the Applicant, as Executrix of her father's estate, entered into a contract to sell the Property and, that prior to the closing on the sale of the Property, a survey was prepared and revealed that the existing home encroached into the front yard setback. Ms. Wasley had no knowledge of the encroachment prior to receipt of the survey.
6. The Board found that the affidavit of Ms. Wasley confirms that, upon information and belief, the addition to the existing home was built in 1983 and has remained in the same location since her father's purchase of the Property in 1998. Ms. Wasley's affidavit also confirms that, upon information and belief, no structural modifications have been made to the home since her father acquired title thereto.
7. The Board found that the affidavit of Ms. Wasley confirms that Property is unique due to its location and unusual shape.
8. The Board found that the affidavit of Ms. Wasley confirms that the need for the variance was not created by her or her father. The home was placed in its current location prior to her father's purchase of the Property.
9. The Board found that the affidavit of Ms. Wasley confirms that the variance is necessary to enable the reasonable use of the Property and that the property cannot be developed in strict conformity with the Sussex County Zoning Code.
10. The Board found that the affidavit of Ms. Wasley confirms that the variance will not alter the essential character of the neighborhood, nor will it be detrimental to the public welfare or substantially or permanently impair the appropriate use or development of adjacent property. Ms. Wasley has never received any

complaints about the location of the house and believes that her parents did not receive any complaints either.

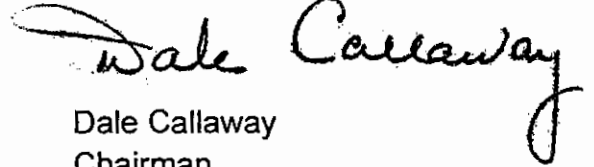
11. The Board found that the affidavit of Ms. Wasley confirms that the variance represents the least modification possible of the regulation at issue and the minimum variance necessary to afford relief.
12. The Board found that no parties appeared in support of or in opposition to the Application.
13. 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 unrebutted, 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 which is clearly evident when reviewing the survey. The Property abuts a canal at an unusual location adjacent to the Property which appears to limit the placement of the dwelling. The unique characteristics of this Property have created an exceptional practical difficulty for the Applicant.
 - b. Due to the unique shape of the lot, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Applicant seeks to leave the existing dwelling in the location where it has been located for over thirty (30) years but is unable to do so without violating the Sussex County Zoning Code. The Board is convinced that the size and location of the dwelling is reasonable. The Board found that the variance is necessary to enable the reasonable use of the Property as the variance will allow the existing dwelling to remain on the Property. The survey attached to the Application confirms that the dwelling is reasonable in size, shape and location.
 - c. The exceptional practical difficulty was not created by the Applicant. The Applicant only recently acquired an interest in the Property after her father's death. The Applicant did not place the dwelling on the Property and did not create the Property's unusual shape. Furthermore, it appears from the record that the dwelling was placed on the Property by a prior owner over thirty (30) years ago. The shape of the Property and the placement of the dwelling by a prior owner has 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 Applicant has demonstrated that she has received no complaints about the location of the dwelling and that she does not believe her parents received complaints either. 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. Since the dwelling has been in its present location for many years, it is unlikely that the encroachment has any effect on the neighborhood.
 - 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 Applicant has demonstrated that the variances sought will allow the dwelling to remain in its existing location and that no variances for new additions 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 April 21, 2015