

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

**IN RE: BARNEY L. LANE, TRUSTOR**

**(Case No. 11536)**

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 variances from the front yard and side yard setback requirements.

Findings of Fact

The Board found that the Applicant was seeking a variance of 9.5 feet from the thirty (30) feet front yard setback requirement and a variance of 7.1 feet from the ten (10) feet side yard setback requirement for an existing dwelling. This application pertains to certain real property located northwest of Route 16 on north end of Broadkill Beach and being southwest of Pintail Lane approximately 700 feet northwest of Alaska Avenue and being Lots 19 and 20 Section 1 Block C within Back Bay Development Broadkill Beach (911 Address: None Available); said property being identified as Sussex County Tax Map Parcel Number 2-30-24.00-70.00 & 71.00.

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 January 7, 2015.
2. The Board found that the Office of Planning & Zoning did not receive any correspondence regarding the Application.
3. Sandy Wright was sworn in to testify about the Application and Shannon Carmean Burton, Esquire, presented the case on behalf of the Applicant. Mrs. Burton submitted an affidavit of Barney L. Lane along with a copy of the survey and pictures of the Property.
4. The Board found that Mrs. Burton stated that the Applicant purchased Lot 20 (Parcel 71) in 1977 and that the dwelling sits on Lot 20.
5. The Board found that Mrs. Burton stated the Applicant improved the home by enclosing the porch in 1983. An addition was made to the front of the home and the deck in or about 1984 and the last addition to the back of the home, which was not encroaching, was completed in 1987.
6. The Board found that Mrs. Burton stated that, in 1985, the Applicant purchased the adjacent Lot 19, which is improved by a gazebo. The Applicant plans to sell Lot 19 (Parcel 69) and the existing gazebo will be removed. Lot 19 is currently owned by the Applicant's trust.
7. The Board found that Mrs. Burton stated that the Applicant also owns Lot C-8 (Parcel 71) and in 1988 built a detached garage on Lot C-8.
8. The Board found that Mrs. Burton stated that the Applicant plans to combine Lot 20 and Lot C-8.
9. The Board found that Mrs. Burton stated that the Applicant recently obtained a survey of the Property which reveals the encroachments.
10. The Board found that Mrs. Burton stated that the dwelling, as improved, has been in its current location since 1987 and the Applicant was unaware of the encroachments until the recent survey.
11. The Board found that Mrs. Burton stated that the existing dwelling was built at an angle on the Property thereby creating a unique circumstance.
12. The Board found that Mrs. Burton stated that the difficulty was not created by the Applicant, since he did not build the existing dwelling. The Applicant also hired

professional contractors to build the additions and was unaware of any encroachments.

13. The Board found that Mrs. Burton stated that the variances are necessary enable reasonable use of the Property.
14. The Board found that Mrs. Burton stated that the variances will not alter the essential character of the neighborhood, the use will not be detrimental to the public welfare, and the use will not substantially or permanently impair the uses of the neighboring and adjacent properties.
15. The Board found that Mrs. Burton stated that the Applicant has not received any complaints about the location of the dwelling.
16. The Board found that Mrs. Burton stated that the Property cannot otherwise be developed in strict conformity with the Zoning Code.
17. The Board found that Mrs. Burton stated that the variances are the minimum variances to afford relief and that the variances represent the least modification of the regulation at issue.
18. The Board found that Ms. Wright, under oath, confirmed the statements made by Mrs. Burton.
19. The Board found that no parties appeared in support of or in opposition to the Application.
20. 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 unusual angled placement of the dwelling on the Property. Rather than being placed parallel with the adjacent road, the dwelling was placed by a prior owner at an angle. The unique placement of the dwelling on this Property has created an exceptional practical difficulty for the Applicant.
  - b. Due to the uniqueness 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 and additions in the locations where they have been located for nearly 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 and additions are reasonable. The Board found that the variances are necessary to enable the reasonable use of the Property as the variances will allow the existing dwelling and additions 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 dwelling was located on the Property prior to the Applicant's purchase thereof and the Applicant used professional contractors to construct additions to the home in compliance with the Sussex County Zoning Code. The Applicant only recently learned of the encroachments. Furthermore, the Applicant did not place the dwelling on the Property. The unique placement of the dwelling by a prior owner and the Applicant's reliance on professionals to construct the additions in compliance with the Sussex County Zoning Code 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 he has received no complaints about the location of the dwelling and that the structures have been in their current locations for many years. 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.

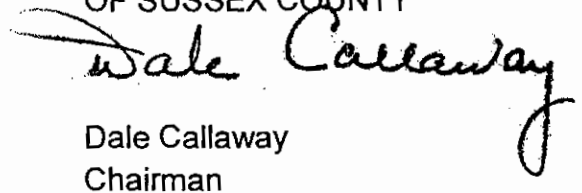
- e. The variance sought is the minimum variance necessary to afford relief and the variance requested represent the least modification possible of the regulation at issue. The Applicant has demonstrated that the variances sought will allow the dwelling and additions to remain in their existing locations 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