

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

**IN RE: LINDA GREGG**

**(Case No. 11542)**

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 side yard setback requirement.

Findings of Fact

The Board found that the Applicant was seeking a variance of 4.7 feet from the ten (10) feet side yard setback requirement for an existing porch and a variance of 0.7 feet from the ten (10) feet side yard setback requirement for an existing dwelling. This application pertains to certain real property located southeast of Route One (Coastal Highway) and being east of Bryan Drive approximately 100 feet south of Tiffany Drive and being more specifically Lot 186 in Midway Estates Subdivision (911 Address: 101 Bryan Drive, Rehoboth Beach, DE); said property being identified as Sussex County Tax Map Parcel Number 3-34-6.00-197.00.

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 September 6, 2013.
2. The Board found that the Office of Planning & Zoning did not receive any correspondence regarding the Application.
3. The Board found that Linda Gregg was sworn in and testified regarding the Application.
4. The Board found that Ms. Gregg testified that she learned of the encroachments during the process of purchasing the Property and that she recently purchased the Property. A survey completed for settlement showed the encroachments and the previous owners were not aware of any encroachments.
5. The Board found that Ms. Gregg testified that it is a unique circumstance since she purchased the Property with the encroachments.
6. The Board found that Ms. Gregg testified that the Property cannot be developed in strict conformity with the Sussex County Zoning Code without a variance.
7. The Board found that Ms. Gregg testified that the dwelling is only .7 feet into the setback area.
8. The Board found that Ms. Gregg testified that the existing porch referenced on the Application is actually a set of steps.
9. The Board found that Ms. Gregg testified that she would be required to shave a portion of her house in order to bring the dwelling into compliance.
10. The Board found that Ms. Gregg testified that the dwelling was built in 1973. She did not build the house and the people she purchased the house from did not build the house. She has not made any additions to the house.
11. The Board found that Ms. Gregg testified that the variances will not alter the character of the neighborhood. She has received no complaints from neighbors and there are similar dwellings in the development. The development is also fully developed.
12. The Board found that Ms. Gregg testified that the variances requested are the minimum variances to afford relief.
13. The Board found that Lawrence Lank, Planning & Zoning Director, stated that the existing uncovered steps on the survey can encroach five (5) feet and a variance is not required.

14. The Board found that one (1) party appeared in support of the Application.
15. The Board found that no parties appeared in opposition to the Application.
16. 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 situation is unique because the dwelling has existed on the Property since 1973 and has only recently been found to encroach into the side yard setback area. The amount of the encroachment is minimal. The unique circumstances of this Property have created an exceptional practical difficulty for the Applicant.
  - b. Due to the unique location of the dwelling, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Applicant seeks the variance to allow for the existing dwelling to remain in its current location 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 home has been in its current location for over forty (40) years without issue. The Board found that the variance is necessary to enable the reasonable use of the Property as the variance will allow the 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 dwelling was placed on the Property by a prior owner and is only slightly encroaching into the setback area. The unique characteristics of this situation 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 dwelling has been in its present location for many years without complaint. The Applicant has not made any additions to the dwelling and has testified that it is similar to other homes in the neighborhood. The neighborhood has also been fully developed. The encroachment is also so small that it would difficult for someone to notice that the house was encroaching into the setback area. 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 variance sought will allow the dwelling to remain in its present location. No variance for any additions is being sought.
  - f. The variance of 4.7 feet for the existing porch was deemed not to be needed, thus, that variance was not granted.

The Board granted the application for a variance of 0.7 feet from the side yard setback 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 member voted against the Motion to approve the variance application.

BOARD OF ADJUSTMENT  
OF SUSSEX COUNTY

*Dale Callaway*

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