

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: KIRSTEN S. CASTANO & KAREN L. GLOOCH

(Case No. 11562)

A hearing was held after due notice on May 4, 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 Applicants were seeking a variance of 1.5 feet from the thirty (30) feet front yard setback requirement for an existing dwelling. This application pertains to certain real property located northeast of Road 275 (Plantation Road) and being north of Beech Drive, approximately 325 feet west of Linden Avenue and being more specifically Lot 2 Block R of Sandy Brae Addition No. 2 (911 Address: 34079 Beech Drive, Lewes); said property being identified as Sussex County Tax Map Parcel Number 3-34-6.00-593.00.

1. The Board was given copies of the Application, a portion of the tax map of the area, a survey dated February 27, 2015, a portion of the Sussex County Zoning Code, and a list of names of nearby property owners.
2. The Board found that the Office of Planning & Zoning did not receive any correspondence regarding the Application.
3. Jennifer Barrows was sworn in to testify about the Application. Richard Berl, Esquire, presented the case on behalf of the Applicants. Mr. Berl submitted a picture of the dwelling to the Board to review.
4. The Board found that Mr. Berl stated that the dwelling was built in 1979 and that a Certificate of Occupancy was issued for the dwelling.
5. The Board found that Mr. Berl stated that a survey completed for settlement showed the encroachment and that the previous owner was unaware of the encroachment.
6. The Board found that Mr. Berl stated that there have been no changes to the existing dwelling and that there are no additions being made to the dwelling.
7. The Board found that Mr. Berl stated that there is a wooded buffer on the side of the Property most affected by the variance and the encroachment would likely not be noticeable but for the existence of the survey.
8. The Board found that Mr. Berl stated that only one corner of the existing dwelling encroaches.
9. The Board found that Jennifer Barrows testified that she was the realtor for the Applicants and that the encroachment will not negatively affect the neighboring and adjacent properties.
10. The Board found that Todd Lavin was sworn in and testified in support of the Application and testified that he is the current owner. He purchased the Property approximately two (2) months ago.
11. The Board found that one (1) party appeared in support of the Application.
12. The Board found that no parties appeared 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 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 has a unique shape which is apparent when reviewing the survey attached the Application. The Property is located adjacent to a cul-de-sac and the southwestern side of the Property is curved, thereby rendering that portion of the front yard smaller than the southeastern corner of the front yard. The uniqueness of the Property has created an exceptional practical difficulty for the Applicants. The Property was built in 1979 and the Applicants only recently learned that the dwelling encroached into the front yard setback area after a survey was recently completed.
- b. Due to the uniqueness of the Property, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The dwelling was placed on the Property in 1979 and a Certificate of Compliance was issued at that time. The dwelling, as shown on the survey and the picture submitted by the Applicants, is of a reasonable size and shape. The Applicants seek the requested variance in order to leave the existing dwelling in its present location and no additional variances are requested. The Board is convinced 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 in its present location. The Board is convinced that the size, shape and location of the dwelling are reasonable; which is confirmed when reviewing the survey.
- c. The exceptional practical difficulty was not created by the Applicants. The dwelling was placed on the Property in 1979 and a Certificate of Compliance was issued at that time. The Applicants acquired the Property in 2002 and have not moved the house or made any additions thereto. The dwelling has been in its present location for many years and the encroachment was only recently discovered. The Property's unique shape has created a smaller front yard setback area on a portion of the front yard and the dwelling encroaches into that area. The Applicants did not create the unique shape of the Property or place the dwelling thereon. As such, it is clear to the Board that the exceptional practical difficulty was not 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 Board is convinced that the dwelling will not have a negative impact on the neighborhood. The unrebutted testimony indicates that the dwelling has been in its present location for many years and that a wooden buffer separates the Property from its neighbor to the southwest. The small size of the variance and the existence of the home in its present location for many years indicate that the variance will have no negative impact on neighboring properties. Rather, since the dwelling has been its present location for so many years, it is likely that the dwelling is part of the character of the neighborhood and the granting of this variance request would in no way alter the character of the neighborhood, impair the uses of adjacent properties, or be detrimental to the public welfare. 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 represents the least modification possible of the regulation at issue. The Applicants have demonstrated that the variance sought will allow the existing dwelling to remain in its present


location. No additions to the dwelling are being proposed which would require 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 June 9, 2015