

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: MIRIAM SNADER

(Case No. 11563)

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 variances from the front yard and rear yard setback requirements.

Findings of Fact

The Board found that the Applicant was seeking a variance of 3.6 feet from the twenty (20) feet rear yard setback requirement and a variance of one (1) foot from the thirty (30) feet front yard setback requirement for an existing dwelling. This application pertains to certain real property located south of Road 277 (Angola Road) and being east of Woodland Circle, approximately 225 feet south of Butternut Court and being more specifically Lot 65 Block A Section 1 within Angola-By-The-Bay Subdivision. (911 Address: None Available); said property being identified as Sussex County Tax Map Parcel Number 2-34-18.05-83.00.

1. The Board was given copies of the Application, a portion of the tax map of the area, an undated survey of the Property, a survey dated August 26, 2004, and a portion of the Sussex County Zoning Code.
2. The Board found that the Office of Planning & Zoning did not receive any correspondence regarding the Application.
3. Sherri Nowicki was sworn in to testify about the Application. Chad Meredith, Esquire, presented the case on behalf of the Applicants. Mr. Meredith submitted a copy of the assessment card to the Board to review.
4. The Board found that Mr. Meredith stated that the Applicant purchased the Property in 2004. The Property is located in Angola by the Bay.
5. The Board found that Mr. Meredith stated that a survey completed in 2004 was approved and recorded. The 2004 survey showed the encroachments.
6. The Board found that Mr. Meredith stated that there have been no additions to the dwelling which have expanded the setback encroachments. The Applicant seeks the variance to allow the dwelling to remain in its current location.
7. The Board found that Mr. Meredith stated that there have been no changes to the Property other than the removal of two decks.
8. The Board found that Mr. Meredith stated that a survey completed in 2015 showed the same encroachments.
9. The Board found that Mr. Meredith stated that the dwelling was built in 1981.
10. The Board found that Mr. Meredith stated that the Property is unique since the encroachment has gone unnoticed since 1981.
11. The Board found that Mr. Meredith stated that the exceptional practical difficulty was not created by the Applicant.
12. The Board found that Mr. Meredith stated that Angola by the Bay is largely developed. Other homes in the neighborhood appear to be similarly situated.
13. The Board found that Mr. Meredith stated that the Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code.
14. The Board found that Mr. Meredith stated that the variances will not impair the uses of the neighboring and adjacent properties.

15. The Board found that Mr. Meredith stated that the variances are necessary enable reasonable use of the Property. Portions of the home would have to be torn down in order to bring the dwelling into compliance.
16. The Board found that Mr. Meredith stated that the variances will not alter the essential character of the neighborhood and the variances will not detrimental to the public welfare.
17. The Board found that Mr. Meredith stated that the variances are the least modifications of the regulations at issue and the variances are the minimum variances to afford relief.
18. The Board found that Ms. Nowicki testified that she was the listing agent for the Property and is familiar with the market in the area.
19. The Board found that Ms. Nowicki testified that the variances will not adversely affect the neighboring properties.
20. The Board found that Ms. Nowicki testified that she confirmed the statements made by Mr. Meredith.
21. The Board found that no parties appeared in support of or in opposition to the Application.
22. 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 as it is a small lot with a small building envelope. This uniqueness is clear when reviewing the surveys attached to the Application. The situation is also unique because the dwelling has been located on the Property in its present location for many years. The uniqueness of the Property and this situation have created an exceptional practical difficulty for the Applicant because the dwelling she purchased did not comply with the Sussex County Zoning Code.
 - 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 1981. The dwelling, as shown on the survey and the picture submitted by the Applicant, is of a reasonable size and shape. The Applicant seeks the requested variances in order to leave the existing dwelling in its present location and no additional variances are requested. The Board is convinced that the variances are necessary to enable the reasonable use of the Property as the variances 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 surveys.
 - c. The exceptional practical difficulty was not created by the Applicant. The dwelling was placed on the Property in 1981 by a prior owner. The Applicant acquired the Property in 2004 and has not moved the house or made any additions thereto. The dwelling has been in its present location for many years. The Property's unique size has created a smaller building envelope which has limited the area where a dwelling can be placed. The Applicant did not create the unique size 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 Applicant.
 - d. The variances 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 un rebutted testimony indicates that the

dwelling has been in its present location for many years and that other homes in the neighborhood are similarly situated. The small size of the variances and the existence of the home in its present location for many years indicate that the variances 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 these variance requests 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 variances would somehow alter the essential character of the neighborhood or be detrimental to the public welfare.

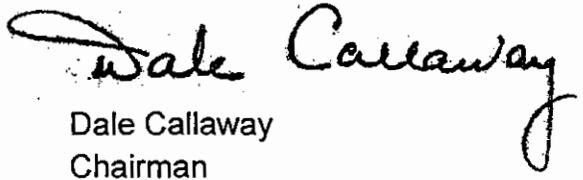
- e. The variances sought are the minimum variances necessary to afford relief and the variances requested represent the least modifications possible of the regulations at issue. The Applicant has demonstrated that the variances sought will allow the existing dwelling to remain in its present location. 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