

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: F. DALE MINNER

(Case No. 11569)

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 rear yard, side yard, and front yard setback requirements.

Findings of Fact

The Board found that the Applicant was seeking a variance of 0.9 feet from the ten (10) feet rear yard setback requirement for an existing dwelling, a variance of 3.1 feet from the fifteen (15) feet side yard setback requirement for an existing dwelling, and a variance of 6.3 feet from the forty (40) feet front yard setback requirement for an existing dwelling. This application pertains to certain real property located south of Road 361A (Jefferson Bridge Road), approximately 350 feet west of Argyle Lane and being more specifically Lot 2 of Walter B. Carey Subdivision (911 Address: 39500 Jefferson Bridge Road, Bethany Beach); said property being identified as Sussex County Tax Map Parcel Number 1-34-17.07-176.00.

1. The Board was given copies of the Application, a portion of the tax map of the area, and a survey dated February 16, 2015.
2. The Board found that the Office of Planning & Zoning did not receive any correspondence regarding the Application.
3. Dale Minner was sworn in to testify about the Application. Mr. Minner submitted exhibits to the Board to review.
4. The Board found that Mr. Minner testified that he purchased the Property in January 2015 at a Sheriff's sale. He purchased both Lots 2 & 3, as shown on the survey. Lots 2 and 3 are considered separate lots.
5. The Board found that Mr. Minner testified that the dwelling is located on Lot 2. The variances requested pertain to Lot 2.
6. The Board found that Mr. Minner testified that the dwelling has been vacant for approximately six (6) years.
7. The Board found that Mr. Minner testified that the dwelling was built in the mid-1970s and is partially located in the setback area.
8. The Board found that Mr. Minner testified that the Property is a corner lot making it unique.
9. The Board found that Mr. Minner testified that the variances will not have a negative impact on neighboring properties. He contacted the surrounding property owners and the neighbors have no objection to the Application.
10. The Board found that Mr. Minner testified that the difficulty was not created by the Applicant.
11. The Board found that Mr. Minner testified that there have been no changes to the original footprint of the dwelling and attached garage but the attached shed has been removed.
12. The Board found that Mr. Minner testified that the Property cannot otherwise be developed. The dwelling and garage cannot be moved.
13. The Board found that Mr. Minner testified that the variances will not alter the character of the neighborhood. The neighborhood is residential.

14. The Board found that Mr. Minner testified that the variances are the least modifications of the regulations at issue.
15. The Board found that one (1) party appeared in support of the Application.
16. The Board found that no parties appeared in opposition to the Application.
17. 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 (Lot 2) is unique due to its small size. The small size of the lot limits the building envelope of the Property; which is further limited due to the fact that the Property is a corner lot adjacent to Argyle Lane and Jefferson Bridge Road. The uniqueness of the Property is apparent when reviewing the survey. It is clear that the uniqueness of the Property has created an exceptional practical difficulty for the Applicant.
 - b. Due to the uniqueness of the Property, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The dwelling and garage were placed on the Property in the mid-1970s and no additions appear to have been made to the structures which would create or enlarge the existing encroachments. The un rebutted testimony of the Applicant indicates that the structures cannot be moved. The Board finds this testimony convincing. The variances are thus necessary to enable reasonable use of the Property. The house and garage, as shown on the survey, are of a reasonable size and shape. The Applicant seeks the requested variances in order to leave the existing house garage in their 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 house and garage to remain on the Property in their present location. The Board is further convinced that the size, shape and location of the house and garage are reasonable; which is confirmed when reviewing the survey.
 - c. The exceptional practical difficulty was not created by the Applicant. The house and garage were placed on the Property in the mid-1970s by a prior owner. The Applicant only recently purchased the Property at a sheriff's sale. The house and garage have been in their present location for many years and the Applicant has received no complaints from neighbors. 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 house and garage will not have a negative impact on the neighborhood. The un rebutted testimony indicates that the house and garage have been in their present location for many years without complaint. The small size of the variances and the existence of the house and garage in their present location for many years indicate that the variances will have no negative impact on neighboring properties. Rather, since the house and garage have been their present location for approximately 40 years, it is likely that the house and garage are 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 house and garage to remain in their present location. No additions to the house and garage 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