

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

**IN RE: THOMAS W. STORK, JR., TERRY L. STORK,**

**BARRY C. SHENK & ROBIN D. SHENK**

**(Case No. 11593)**

A hearing was held after due notice on June 22, 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 are seeking a variance of 2.3 feet from the thirty (30) feet front yard setback requirement for an existing dwelling. This application pertains to certain real property located on the east side of Branch Road, southwest of Autumn Road (911 Address: 26073 Branch Road, Millsboro); said property being identified as Sussex County Tax Map Parcel Number 2-34-23.00-145.00.

1. The Board was given copies of the Application, a portion of the tax map of the area, and an undated survey of the Property.
2. The Board found that the Office of Planning & Zoning received had not received any correspondence regarding the Application.
3. Barry Shenk was sworn in to testify about the Application. William Schab, Esquire, presented the case on behalf of the Applicants and submitted pictures to the Board to review.
4. The Board found that Mr. Schab stated that the Applicants purchased Lot 37 and Lot 38 in 2003.
5. The Board found that Mr. Schab stated that mobile homes and various outbuildings were located on the properties at that time. The homes have since been replaced.
6. The Board found that Mr. Schab stated that a survey completed to reconfigure the lot line between Lots 37 and 38 showed the encroachments. The shed on Lot 38 will be moved into compliance. The pool and large shed on Lot 37 have been removed.
7. The Board found that Mr. Schab stated that the Property is unique because it is pie-shaped and is located on a curve.
8. The Board found that Mr. Schab stated that existing septic systems in the rear yard and the unique shape of the lots create a unique situation. The house had to be placed so as it would not sit on top of the septic system.
9. The Board found that Mr. Schab stated that the lot lines between Lots 37 and 38 had to be moved so that the septic system for each parcel would be located entirely on the lot being serviced by the system.
10. The Board found that Mr. Schab stated that the dwelling is located on a permanent foundation.
11. The Board found that Mr. Schab stated that it would be very expensive to move the house.
12. The Board found that Mr. Schab stated that the variance will not alter the character of the neighborhood.
13. The Board found that Mr. Schab stated that the dwelling was placed in 2008.
14. The Board found that Mr. Schab stated that the variance is the minimum variance necessary to afford relief.

15. The Board found that Mr. Shenk, under oath, affirmed the statements made by Mr. Schab.
16. The Board found that Mr. Shenk testified that measured from the road and not the property line. The adjacent Brand Road is not fully paved.
17. The Board found that Mr. Shenk testified that the error could not be easily corrected.
18. The Board found that Mr. Shenk testified that a Certificate of Compliance was issued for the dwelling.
19. The Board found that three (3) parties appeared in support of the Application.
20. The Board found that no parties appeared in opposition to the Application.
21. 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 its unique shape. The Property is pie-shaped and is located on a curve on the adjacent Branch Road. The Property is also unique because of the location of the septic system servicing the dwelling. The unique characteristics of this Property limit the buildable area available to the Applicants and have created an exceptional practical difficulty for the Applicants. The unique shape of the Property is evident when reviewing the survey submitted by the Applicants. The situation is also unique because the dwelling was constructed and a Certificate of Compliance was obtained, which indicates that the dwelling complies with the Sussex County Zoning Code.
  - b. Due to the uniqueness of the lot, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property has a unique shape and the buildable area thereof is limited due to the location of the existing septic system. The Applicants seek to retain the dwelling of a reasonable size, which is located on a permanent foundation, but are unable to do so without violating the Sussex County Zoning Code. The Board is convinced that the variance is necessary to enable the reasonable use of the Property as the variance will allow a reasonably sized dwelling to be retained on the Property. 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 Property has a unique shape and the location of the existing septic system has greatly limited the placement of the dwelling. The Applicants obtained a Certificate of Compliance for the dwelling when it was placed in 2008 and the encroachment was only recently discovered. It appears as though a mistake was made in measuring the front yard property line. The adjacent Branch Road is not fully paved and a portion of what appears to be the Applicants' front yard is actually a portion of the road. This mistake was made in placing the dwelling and was also made by the Planning & Zoning Department when issuing a Certificate of Compliance. The Applicants obtained the necessary permits and a Certificate of Compliance and the mistake was only recently discovered even though the dwelling had been in its present location since 2008. 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

encroachment is into the front yard setback area which is adjacent to Branch Road, which is not paved to its boundaries. The encroachment of the dwelling into the front yard setback should have no effect on Branch Road. Furthermore, the dwelling has also been in its present location for quite some time with no complaint about the encroachment having been submitted into the record. Rather, it appears as though the dwelling is likely part of the character of the neighborhood. Additionally, 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.

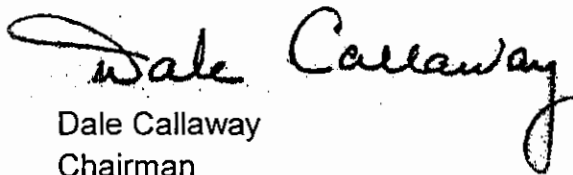
- e. The variance sought is the minimum variance necessary to afford relief and the variance requested represents the least modification possible of the regulation at issue. The Applicants have demonstrated that the variance sought will allow the dwelling to remain in its existing location. No variance is being sought for an addition to the existing dwelling.

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 August 4, 2015