

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: ESTATE OF VIRGINIA RAY

(Case No. 11624)

A hearing was held after due notice on August 17, 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 and rear yard setback requirements.

Findings of Fact

The Board found that the Applicant is seeking a variance of 1.1 feet from the fifteen (15) feet side yard setback requirement, a variance of 4.5 feet from the twenty (20) feet rear yard setback requirement, and a variance of 3.1 feet from the twenty (20) feet rear yard setback requirement for an existing dwelling. This application pertains to certain real property located on the northeast corner of Dirickson Creek Road and Beth Marie Lane (911 Address: 37469 Dirickson Creek Road, Frankford); said property being identified as Sussex County Tax Map Parcel Number 1-34-21.00-18.14.

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 May 13, 2015
2. The Board found that the Office of Planning & Zoning had not received any correspondence in support of or in opposition to the Application.
3. The Board found that Jane Hiegel was sworn in to testify about the Application.
4. The Board found that Ms. Hiegel testified that she is the executrix of her sister's estate and that, per her sister's will, the Property must be sold. A survey completed for the sale showed the existing encroachments.
5. The Board found that Ms. Hiegel testified that the existing dwelling was moved to the Property in 1985 and her sister had an addition built in June 2002. A Certificate of Compliance was issued for the addition in March 2003.
6. The Board found that Ms. Hiegel testified that the rear of the Property is adjacent to a lagoon.
7. The Board found that Ms. Hiegel testified that an exceptional practical difficulty exists and the Property cannot otherwise be developed.
8. The Board found that Ms. Hiegel testified that the exceptional practical difficulty was not created by the Applicant.
9. The Board found that Ms. Hiegel testified that the variances do not alter the character of the neighborhood.
10. The Board found that Ms. Hiegel testified that the variances are the minimum needed to afford relief.
11. The Board found that Ms. Hiegel testified that the septic system is in the rear yard.
12. The Board found that Ms. Hiegel testified that the Estate plans to combine the Property with a neighboring parcel.
13. The Board found that no parties appeared in support of or in opposition to the Application.
14. 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, which is apparent when reviewing the survey. The Property is also located at the intersection of two roads and is adjacent to an unexcavated lagoon. The unique shape of the lot and its proximity to an intersection limit the building envelope for the dwelling. The Property's unique characteristics have created an exceptional practical difficulty for the Applicant who seeks to retain a dwelling on the lot.
- 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 its shape. The Applicant seeks to retain a reasonably sized dwelling but is unable to do so without violating the Sussex County Zoning Code. 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. The Board is convinced that the size, shape, and location of this dwelling are reasonable, which is confirmed when reviewing the survey provided by the Applicant.
- c. The exceptional practical difficulty was not created by the Applicant. The Applicant did not create the unusual shape of the Property. The odd shape of the rear yard and the proximity of the Property to an intersection (which thereby requires a larger side yard setback) have led to a smaller building envelope for the Applicant. This unusually shaped building envelope has created an exceptional practical difficulty for the Applicant. Additionally, the decedent relied on her builder to construct the addition to the dwelling in compliance with the Sussex County Zoning Code. The decedent obtained a building permit and a Certificate of Compliance which likely led her to believe that the dwelling with an addition had been placed in compliance with the Code.
- 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 have no effect on the character of the neighborhood. The neighborhood is a residential area and the dwelling has been on the lot since 1985 and the addition has been on the lot since 2003. No complaints about the location of the dwelling have been submitted into the record. Furthermore, 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 represents the least modifications possible of the regulations at issue. The Applicant has demonstrated that the variances sought will allow the Applicant to retain the dwelling on the Property. No additions to the dwelling are being proposed which would require additional variances.

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 October 16, 2015