

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

**IN RE: BENJAMIN M. OAKES & TAMMY L. OAKES**

**(Case No. 11637)**

A hearing was held after due notice on September 21, 2015. The Board members present were: Mr. Dale Callaway, Mr. Jeff Hudson, Mr. John Mills, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for a variance from the side yard setback requirement.

Findings of Fact

The Board found that the Applicants are seeking a variance of 0.3 feet from the ten (10) feet side yard setback requirement for an existing dwelling. This application pertains to certain real property located on the northwest corner of Mulberry Knoll Road and west of Love Drive (911 Address: 20690 Mulberry Knoll Road, Lewes); said property being identified as Sussex County Tax Map Parcel Number 3-34-18.00-70.01.

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 had not received any correspondence in support of or in opposition to the Application.
3. Benjamin Oakes was sworn in to testify about the Application and William Schab, Esquire, presented the Application on behalf of the Applicant.
4. The Board found that Mr. Schab stated that the Applicants purchased the Property in 2013 and a survey completed for settlement showed the encroachment.
5. The Board found that Mr. Schab stated that the previous owners purchased the Property in 1981 and built the existing dwelling. The children of the previous owner inherited the Property and sold to the Applicants.
6. The Board found that Mr. Schab stated that a portion of the home would have to be removed to comply with the setback requirements.
7. The Board found that Mr. Schab stated that the dwelling has been in its location for many years without any adverse effect on neighboring properties.
8. The Board found that Mr. Schab stated that the variance is necessary for the reasonable use of the Property and the Property cannot otherwise be developed.
9. The Board found that Mr. Schab stated that the difficulty was not created by the Applicants.
10. The Board found that Mr. Schab stated that the variance will not alter the character of the neighborhood.
11. The Board found that Mr. Schab stated that there have been no changes to the Property since the dwelling was first constructed in 1981.
12. The Board found that Mr. Schab stated that the variance requested is the minimum variance to afford relief.
13. The Board found that Mr. Oakes, under oath, affirmed the statements made by Mr. Schab.
14. The Board found that Mr. Oakes testified that the entire house would have to be moved to comply with the Code and that the location of the dwelling does not adversely affect the neighboring properties.
15. The Board found that no parties appeared in support of or in opposition to the Application.
16. 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 situation is unique as the existing dwelling has been in its present location since 1981 yet, only recently, has a minimal side yard encroachment been discovered. The dwelling sits 9.7 feet from the side property line. The encroachments were not initially discovered at the time the dwelling was constructed and the home has been in this location for many years. This unusual situation has created an exceptional practical difficulty for the Applicants who seek to retain a reasonably sized dwelling on the lot.
- b. Due to the uniqueness of the situation, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The building was constructed in 1981 and, since the dwelling is merely inches into the side setback area, the prior owner likely held the reasonable belief that the dwelling was in compliance with the Sussex County Zoning Code. The error was only discovered recently. A portion of the house would have to be removed in order to comply but the Board has concerns about the feasibility of such remedial action; particularly given the age of the dwelling and its minimal encroachment. Rather, the Board is convinced that the dwelling cannot be reasonably brought into compliance with the Code. It is clear to the Board, however, that the Applicants are unable to retain the dwelling in its current location 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 remain on the Property. The Board is convinced that the size, shape, and location of this building are reasonable, which is confirmed when reviewing the survey provided by the Applicants.
- c. The exceptional practical difficulty was not created by the Applicants. The dwelling was constructed by a prior owner. The Applicants only recently purchased the Property and had no involvement in the construction of the dwelling. The encroachments were only recently discovered after the home had been on the Property for many years. The Board is convinced that the exceptional practical difficulty was not created by the Applicants but by a prior owner when the dwelling was constructed.
- 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 have no effect on the character of the neighborhood. The Property is located in a residential area and the use is a residential use. The structure has been in its present location since 1981 and no complaints have been submitted into the record regarding the encroachment. Furthermore, no evidence was presented which indicated that the variance would somehow alter the essential character of the neighborhood or be detrimental to the public welfare. The lack of such evidence is telling since the dwelling has been in its present location for many years.
- 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 Applicants to retain the dwelling on the Property. No additions to the dwelling are proposed.

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, and Mr. Brent Workman. No Board Member voted against the Motion to Approve the Application. Mr. Norman Rickard was not present and did not participate in the discussion or vote of this 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 November 17, 2015