

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: ANN R. DOMMES, TRUSTEE OF THE

ANN R. DOMMES REVOCABLE TRUST

(Case No. 11640)

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 front yard setback requirement.

Findings of Fact

The Board found that the Applicant is seeking a variance of 6.3 feet from the thirty (30) feet front yard setback requirement for an existing dwelling. This application pertains to certain real property located on the north side of Beacon Drive in the cul-de-sac at the end of Lighthouse Drive (911 Address: 21 Beacon Drive, Rehoboth Beach); said property being identified as Sussex County Tax Map Parcel Number 3-34-7.00-79.00.

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 June 24, 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. Ann Dommies was sworn in to testify about the Application and Chad Meredith, Esquire, presented the Application on behalf of the Applicant.
4. The Board found that Mr. Meredith stated that the Applicant purchased the Property in July 2015 and that a survey completed for settlement showed the encroachment.
5. The Board found that Mr. Meredith stated that the existing manufactured home was placed in 1996 and is located on a foundation. The unit is classified as a "C" Grade dwelling by the Assessment Division and has been classified as such since 1996.
6. The Board found that Mr. Meredith stated that a permit was issued for the front porch in 1987. The porch is enclosed.
7. The Board found that Mr. Meredith stated that the Property is unique as it is pie shaped and is located at the end of a cul-de-sac. There is an existing twenty (20) foot wide drainage easement in the rear of the Property and a county road is located near the rear of the Property.
8. The Board found that Mr. Meredith stated that the Property cannot be otherwise developed in strict conformity with the Sussex County Zoning Code.
9. The Board found that Mr. Meredith stated that there are other homes in the area similarly situated in the development and the development is well-developed.
10. The Board found that Mr. Meredith stated that the Applicant seeks the variance to allow the home to remain in its current location.
11. The Board found that Mr. Meredith stated that the variance will not alter the character of the neighborhood. The use is not detrimental to the public welfare.
12. The Board found that Mr. Meredith stated that the variance requested is the minimum variance to afford relief.
13. The Board found that Mr. Meredith stated that the exceptional practical difficulty was not created by the Applicant.

14. The Board found that Mr. Meredith stated that there have been no complaints from the neighbors.
15. The Board found that Ms. Dommies, under oath, affirmed the statements made by Mr. Meredith.
16. The Board found that no parties appeared in support of or 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 is unique due to its unique shape and the location of the drainage easement. The Property is pie-shaped and adjacent to a cul-de-sac. The shape of the Property is very unique and is apparent when reviewing the survey and the tax map. The location of the drainage easement also creates a unique situation as it limits the buildable area of the Property. Furthermore, the rear of the Property is located close to Wolfe Neck Road; though the Property is not a through lot. This unusual situation has created an exceptional practical difficulty for the Applicant who seeks to retain a reasonably sized dwelling on the lot.
 - 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 on or before 1996 and is located on a permanent foundation. Recently, however, the Applicant discovered that the dwelling encroaches into the setback area. The Applicant seeks to retain the dwelling on the Property but cannot 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 remain 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 Applicant. The dwelling was placed on the Property by a prior owner(s). The Applicant only recently purchased the Property and had no involvement in the placement of the dwelling. The encroachment was only recently discovered after the dwelling had been on the Property for many years. The Board is convinced that the exceptional practical difficulty was not created by the Applicant but by a prior owner when the dwelling was placed on the Property constructed and by the Property's unique shape and conditions which clearly limit the building envelope for the Property.
 - 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 dwelling has been in its present location since the at least 1996 and other homes in the development appear to be similarly situated. No complaints have been submitted into the record regarding the encroachments. 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 Applicant has demonstrated that the variance sought will allow the Applicant to retain the dwelling on the Property in its existing location. No additions to the dwelling are being 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