

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: JEFFRY W. HELMINIAK AND MACY H. HELMINIAK

(Case No. 11681)

A hearing was held after due notice on December 21, 2015. The Board members present were: Mr. Dale Callaway, Mr. John Mills, Mr. Jeff Hudson, 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 1.7 feet from the thirty (30) feet front yard setback requirement for an existing dwelling. This application pertains to certain real property located on the northwest corner of Glade Farm Road and South Lake Terrace (911 Address: 1 South Lake Terrace, Rehoboth Beach); said property being identified as Sussex County Tax Map Parcel Number 3-34-7.00-291.00.

1. The Board was given copies of the Application, a portion of the tax map of the area, and a survey dated July 30, 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 Jeffry Helminiak was sworn in to testify about the Application and William Schab, Esquire, appeared on behalf of the Applicant.
4. The Board found that Mr. Schab stated that the dwelling was built in 1997 and a Certificate of Compliance was issued by Sussex County in 1997.
5. The Board found that Mr. Schab stated that the Property is a corner lot and it seems that the encroachment into the thirty (30) feet setback requirement off of South Lake Terrace went unnoticed in 1997 even though a survey was completed at that time.
6. The Board found that Mr. Schab stated that the Property cannot otherwise be developed.
7. The Board found that Mr. Schab stated that the Applicants purchased the Property from the previous owner who placed the dwelling on the Property. The Applicants are selling the Property and a survey completed by a prospective buyer showed the encroachment.
8. The Board found that Mr. Schab stated that the situation is unique because the Certificate of Compliance was issued.
9. The Board found that Mr. Schab stated that the exceptional practical difficulty was not created by the Applicants since the dwelling was already on the Property when they purchased it.
10. The Board found that Mr. Schab stated that the encroachment will not and has not altered the character of the neighborhood. The building has been in its present location since 1997.
11. The Board found that Mr. Schab stated that the variance requested is the minimum variance to afford relief.
12. The Board found that Mr. Schab stated that the Homeowners Association and neighbors have been informed that the variance is not for an addition to the dwelling.
13. The Board found that Mr. Helminiak, under oath, affirmed the statements made by Mr. Schab.

14. The Board found that Mr. Helminiak testified that the issue could not be corrected without removing a portion of the attached garage which would be a financial burden.
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 Property is unique as it is a corner lot with different setbacks than are normally found with lots in this area. The situation is also unique because the previous owner was issued a Certificate of Compliance indicating that the dwelling complied with the Sussex County Zoning Code. The lot's unique characteristics have created an exceptional practical difficulty for the Applicant who seeks to retain an existing dwelling on the lot. The previous issuance in 1997 of a Certificate of Compliance has also created a difficulty for the Applicants who reasonably believed the dwelling to be in compliance with the setback requirements.
 - b. Due to the uniqueness of the lot, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property is a corner lot and, as a result, the buildable area thereof is limited. The Applicants seek to retain a dwelling of a reasonable size 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 remain on the Property. The Board is convinced that the shape and location of this dwelling are also reasonable, which is confirmed when reviewing the survey provided by the Applicants.
 - c. The exceptional practical difficulty was not created by the Applicants. The Applicants did not create the corner lot which has resulted in a limited building envelope on the Property. The Applicants also did not place the dwelling on the Property. Rather, the Applicants purchased the Property from a prior owner who built the dwelling and obtained a Certificate of Compliance from Sussex County. The Applicants reasonably believed that the dwelling complied with the setback requirements only to later find out that a small portion of the dwelling encroached into the setback area. The Board is convinced that the exceptional practical difficulty was not created by the Applicants but was created the lot's unique characteristics and by the placement of the dwelling thereon by the prior owner.
 - 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 dwelling has been on the Property since approximately 1997. Despite the longstanding location of this dwelling and notification to neighbors and the homeowners association, no complaints were noted in the record about the location of the dwelling. Furthermore, 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 Applicants to retain a reasonably sized dwelling on the Property. The Applicants do not intend to make any additions to the dwelling and only seek the variance to allow the existing dwelling to remain in its current location.

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 Member 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 March 1, 2016