

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY
IN RE: DOUGLAS G. PFEIFFER AND LIANE D. PFEIFFER, TRUSTEES
(Case No. 11682)

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 side yard setback requirement.

Findings of Fact

The Board found that the Applicants are seeking a variance of 0.8 feet from the eight (8) feet setback side yard requirement on the northeast side for an existing chimney. This application pertains to certain real property located on the south side of Rogers Avenue, approximately 657 feet west of Coastal Highway (Route 1) (911 Address: 21205 Rogers Avenue, Rehoboth Beach); said property being identified as Sussex County Tax Map Parcel Number 3-34-20.13-60.01.

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 Application.
3. The Board found that Joe Choma was sworn in to testify about the Application and William Schab, Esquire, appeared on behalf of the Applicant. Mr. Schab submitted photographs of the Property to the Board to review.
4. The Board found that Mr. Schab stated that Mr. Choma is a realtor who is familiar with the Property.
5. The Board found that Mr. Schab stated that the existing dwelling was built in 1985.
6. The Board found that Mr. Schab stated that the original owner sold the Property to the Applicants in "as is" condition. A survey completed for settlement showed the encroachment and the Applicants were not aware of the encroachment.
7. The Board found that Mr. Schab stated that the lot is narrow.
8. The Board found that Mr. Schab stated that the Property cannot otherwise be developed.
9. The Board found that Mr. Schab stated that there is no adverse effect to the neighboring properties and the variance does not alter the character of the neighborhood.
10. The Board found that Mr. Schab stated that the variance is necessary to enable reasonable use.
11. The Board found that Mr. Schab stated that the variance is the minimum variance necessary to afford relief.
12. The Board found that Mr. Schab stated that the chimney must be of a certain size and to bring the chimney into compliance would likely result in the removal altogether of the chimney.
13. The Board found that Mr. Choma, under oath, affirmed the statements made by Mr. Schab.
14. The Board found that Mr. Choma testified that he has been a realtor in the area for fourteen (14) years.
15. The Board found that Mr. Choma testified that no one was aware of the encroachment.

16. The Board found that Mr. Choma testified that the chimney adds value to the Property and the encroachment has no negative effect to the neighboring properties.
17. The Board found that Mr. Choma testified that the shed has been moved into compliance.
18. The Board found that no parties appeared in support of or in opposition to the Application.
19. 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 narrow width which is evident when reviewing the survey provided by the Applicants. The narrowness of the Property limits the building envelope on the Property and has created an exceptional practical difficulty for the Applicants who seek to retain an existing chimney 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 width and the buildable area thereof is limited due to its narrowness. The Applicants seek to retain a chimney 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 chimney to remain on the Property. The Board is convinced that the shape and location of this chimney are also reasonable, which is confirmed when reviewing the survey and pictures provided by the Applicants.
 - c. The exceptional practical difficulty was not created by the Applicants. The Applicants did not create the unusual width of the Property which has resulted in a limited building envelope on the Property. The small building envelope has created the exceptional practical difficulty. Furthermore, the chimney was placed on the Property by a prior owner and has been in its present location since approximately 1985. 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 chimney 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 chimney will have no effect on the character of the neighborhood. The chimney has been on the Property since approximately 1985. Despite the longstanding location of this chimney, no complaints were noted in the record about the location of the chimney. 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. The Board also notes that the chimney encroaches into the setback area by mere inches and the encroachment is likely difficult to see from neighboring properties. Lastly, a realtor has testified that the chimney adds value to the Property but does not detract from any neighboring property. The Board finds this testimony persuasive.
 - e. The variance sought is the minimum variance necessary to afford relief and the variance requested represents the least modification possible of

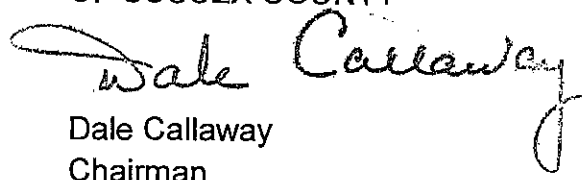
the regulation at issue. The Applicants have demonstrated that the variance sought will allow the Applicants to retain a reasonably sized chimney on the Property. The Applicants do not intend to make any additions to the chimney and only seek the variance to allow the existing chimney to remain in its 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