

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY
IN RE: DARRELL LOUIS WAGNER AND JACQUELINE MELLON WAGNER
(Case No. 11685)

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 variances from the side yard and rear yard setback requirements.

Findings of Fact

The Board found that the Applicant is seeking a variance of 3.6 feet from the ten (10) feet side yard setback requirement for an attached garage, a variance of 4.2 feet from the five (5) feet side yard setback requirement on the northeast side for an existing shed, and a variance of 0.7 feet from the ten (10) feet rear yard setback requirement for an existing dwelling. This application pertains to certain real property located on the south side of East Berkley Court approximately 620 feet east of King Charles Drive (911 Address: 32826 East Berkley Court, Millsboro); said property being identified as Sussex County Tax Map Parcel Number 2-34-29.00-716.00.

1. The Board was given copies of the Application, a portion of the tax map of the area, a survey dated September 1, 2015, a printout of the zoning history, and building permits dated June 15, 1998, October 2, 1997, and November 18, 1997.
2. The Board found that the Office of Planning & Zoning received no correspondence regarding the Application.
3. The Board found that Darrell Wagner was sworn in to testify about the Application and Craig Aleman, Esquire, appeared on behalf of the Applicants.
4. The Board found that Mr. Aleman stated that the Applicants purchased the Property in September 2015.
5. The Board found that Mr. Aleman stated that the Property is located at the end of a cul-de-sac.
6. The Board found that Mr. Aleman stated that the driveway encroaches onto the neighbor's property. The neighbor does not oppose the relief sought by the Applicants.
7. The Board found that Mr. Aleman stated that the dwelling was not properly located on the Property by the builder but Certificates of Compliances were issued for the dwelling, garage, and addition. The Applicants believe the builder made an honest mistake.
8. The Board found that Mr. Aleman stated that the previous owners were unaware of the encroachments.
9. The Board found that Mr. Aleman stated that the Applicants would suffer a hardship if required to bring the dwelling into compliance.
10. The Board found that Mr. Aleman stated that the dwelling has been in its current location for more than 14 years.
11. The Board found that Mr. Aleman stated that the Applicants did not place the dwelling on the Property and, thus, did not create the hardship.
12. The Board found that Mr. Aleman stated that the variances do not alter the essential character of the neighborhood.
13. The Board found that Mr. Aleman stated that the variances are the minimum variances to afford relief as the variances will allow the existing dwelling to remain in its present location

14. The Board found that Mr. Wagner, under oath, affirmed the statements made by Mr. Aleman.
15. The Board found that Mr. Wagner testified that he would have remove the garage and addition to the house in order to comply with the Sussex County Zoning Code. The shed, however, can be and will be moved into compliance.
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 for the side yard variance and rear yard variance for the dwelling with attached garage 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. The Property is located at the end of a cul-de-sac and the front of the Property is uniquely shaped. This unique shape has created an oddly shaped building envelope which limits the buildable area of the Property. The situation is also unique because a prior owner obtained building permits for the construction of the dwelling, garage, and addition in 1997-1998. Certificates of Compliance were issued so the prior owners reasonably believed the structures to be in compliance at that time. The Property's unique characteristics and these unique circumstances have created an exceptional practical difficulty for the Applicants who seek to retain a reasonably sized detached dwelling with attached garage on the lot.
 - b. Due to the uniqueness of the location of the shape of the Property and the mistake made in placing the structures on the Property by a prior owner, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Applicants seek to retain a reasonably sized dwelling with an attached garage but are unable to do so without violating the Sussex County Zoning Code. The structures have been in their present location for many years and it would be difficult, if not impossible, to bring the structures into compliance without great expense and substantial renovation to the structures. The Board is convinced that the variances are necessary to enable the reasonable use of the Property as the variances will allow the dwelling and attached garage to remain on the Property. The Board is convinced that the size, shape, and location of this dwelling with attached garage 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 unique shape of the Property has limited the building envelope and a prior owner placed the dwelling with attached garage on the Property. Certificates of Compliance were issued for these projects and the prior owner likely reasonably believed that the structures were in compliance with the Sussex County Zoning Code. The Board is convinced that these unique conditions have created the exceptional practical difficulty.
 - 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 with attached garage will have no effect on the character of the neighborhood. The dwelling and garage have been in their present location for many years and the neighbors have no objection to its location. This lack of objection is notable due to the length of time the structures have been located in their present location. 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.

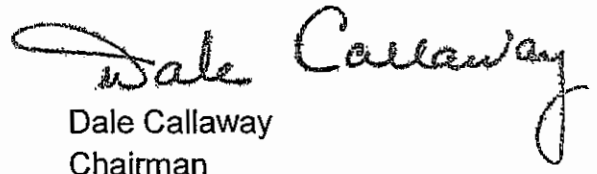
- e. The variances sought are the minimum variances necessary to afford relief and the variances requested represents the least modifications possible of the regulations at issue. The Applicants have demonstrated that the variances sought will allow the Applicants to retain a reasonably sized dwelling with attached garage on the Property. The Applicants do not seek variances for any new additions to these structures.
18. 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 unrebutted, the Board determined that the application for the side yard variance for the shed failed to meet the standards for granting a variance. The findings below further support the Board's decision to approve the Application.
- a. The Applicant testified that the shed can be moved into compliance with the Sussex County Zoning Code.
 - b. Since the shed can be moved into compliance with the Sussex County Zoning Code, the variance for the shed is not necessary to enable reasonable use of the Property. Furthermore, the variance for the shed is not the minimum variance to afford relief. In fact, no variance is needed for the Applicant to relocate the shed elsewhere on the Property and in compliance with the Code.

The Board granted the variance application for the dwelling and garage finding that it met the standards for granting a variance but denied the variance request for the shed finding that it failed to meet the standards for granting a variance.

Decision of the Board

Upon motion duly made and seconded, the variance application was approved in part and denied in part. The Board Members in favor of the motion 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 in part and to deny in part 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