

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: ROBERT BETTS

(Case No. 11731)

A hearing was held after due notice on March 7, 2016. The Board members present were: Mr. Dale Callaway, Mr. Jeff Hudson, Mr. Norman Rickard, and Mr. Brent Workman. Mr. John Mills was absent.

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 Applicant is seeking a variance of seven (7) feet from the fifteen (15) feet side yard setback requirement on the northeast side of the Property for an existing dwelling. This application pertains to certain real property located on the west side of Mustang Run in Sugar Maple Farms Subdivision (911 Address: 7668 Mustang Run, Milford); said property being identified as Sussex County Tax Map Parcel Number 3-30-16.00-79.00.

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 November 17, 2015.
2. The Board found that the Office of Planning & Zoning received had not received any correspondence in support of or in opposition to the Application.
3. The Board found that Robert Betts was sworn in to testify about the Application.
4. The Board found that Mr. Betts testified that the rear of the Property has multiple lot pins. He is the builder and the owner of the Property and, when determining the location of the dwelling, an error was made in identifying the correct pin.
5. The Board found that Mr. Betts testified that the front corner of the attached garage is the only portion encroaching into the setback requirement.
6. The Board found that Mr. Betts testified that the difficulty was not created by the Applicant. The Applicant did not set the pins to indicate the boundaries of the Property.
7. The Board found that Mr. Betts testified that the use is not detrimental to the public welfare.
8. The Board found that Mr. Betts testified that at the variance will not alter the character of the neighborhood.
9. The Board found that Mr. Betts testified that the variance requested is the minimum variance to afford relief.
10. The Board found that Mr. Betts testified that the dwelling was built in 2015 and the encroachment was discovered when the final survey was completed after construction.
11. The Board found that Mr. Betts testified that, if a portion of the garage was removed to bring the Property into compliance, the structure would not meet the homeowners association requirements for a two car garage.
12. The Board found that Mr. Betts testified that it would be an extreme hardship to bring the dwelling into compliance.
13. The Board found that Mr. Betts testified that the variance will not adversely affect the neighboring and adjacent properties and the adjacent neighbor has no objection to the Application.
14. The Board found that Mr. Betts testified that the Property was not created in a similar size and design as the lot to the rear of the Property which is unusual.
15. The Board found that Mr. Betts testified that he believed the lot to be significantly wider than it actually is.

16. The Board found that Mr. Betts testified that Route One and its right-of-way is adjacent to the Property.
17. The Board found that Mr. Betts testified that he has been a builder in the area for twenty-five (25) years and has never needed a variance before.
18. The Board found that James Malley and Theodore Cormier were sworn in and testified in opposition to the Application.
19. The Board found that Mr. Malley testified that he is the President of Sugar Maple Farms Inc.
20. The Board found that Mr. Malley believes that the Applicant should remove the dwelling or bring it into compliance with the Sussex County Zoning Code.
21. The Board found that Mr. Malley testified that approximately 31 lots out of 66 lots have been developed and he lives on Lot 28.
22. The Board found that Mr. Malley testified that the Applicant should have had the Property staked out professionally prior to building the dwelling.
23. The Board found that Mr. Cormier testified that he owns Lot 10.
24. The Board found that Mr. Cormier testified that the Applicant should have followed the covenants of the community and the Applicant should have had the surveyor locate the pins for the lot prior to building the home.
25. The Board found that Mr. Cormier testified that a portion of the garage cannot be removed since then the structure would not meet the homeowners association's requirements. He believes that the entire structure must be moved to bring it into the compliance.
26. The Board found that Mr. Cormier testified that the homeowners association approved the plans of the dwelling.
27. The Board found that Mr. Betts testified that the homeowners association requires a two (2) car attached garage.
28. The Board found that Mr. Betts testified that the dwelling is an average size home for that area and he has built three (3) other dwellings in this development.
29. The Board found that Mr. Betts testified that there are different board members on the homeowners association since his submittal that was approved.
30. The Board found that Mr. Malley testified that no plot plan was submitted to show the proposed location of the dwelling. He confirmed that the homeowners association approved the proposed plans.
31. The Board found that no parties appeared in support of the Application.
32. The Board found that two (2) parties appeared in opposition to the Application.
33. The Board tabled its decision until March 21, 2016, at which time it discussed the Application.
34. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, 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 irregular shape and odd side yard setback requirement which is evident when reviewing the survey provided by the Applicant. Notably, the Property has a uniquely shaped front yard due to the existence of the cul-de-sac. The location of the cul-de-sac in relation to the dwelling necessitates that the dwelling be angled so that the dwelling does not run parallel to the side yard property lines. As such, a portion of the front part of the dwelling encroaches into the side yard setback area. The cul-de-sac also greatly limits the buildable area of the front yard of the Property. Ultimately, the unique shape of the front yard and the exceptionally large side yard setback requirement on the southwest side of the lot limit the building envelope on the Property and have created an exceptional practical difficulty for the Applicant who seeks to retain an existing dwelling on the lot. The situation is also unique

because the Property is not as wide as the lot to the rear of the Property (Lot 66) and the Applicant reasonably believed that his lot (Lot 60) was wide enough to accommodate the proposed dwelling. The Applicant located a surveying pin and relied on that pin in setting the dwelling. This reasonable mistake exacerbated the difficulty caused by the Property's unique characteristics. The Board also notes that the Property is narrower than other lots in the community; such as Lot 66 and Lot 61 which are neighboring properties.

- 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 size and side yard setback and the buildable area thereof is limited due to these conditions. The Applicant seeks to retain a dwelling of a reasonable size but is unable to do so without violating the Sussex County Zoning Code. The Applicant received approval from the homeowners association prior to constructing the dwelling and the Applicant reasonably believed that the dwelling would comply with the Code. The portion of the dwelling which encroaches into the side yard setback area is quite small but the Applicant, as admitted to by the opposition, would not be able to bring the dwelling into compliance – especially in light of the restrictive covenants which require a garage attached to the dwelling. (The garage is part of the encroaching portion of the dwelling). 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 reasonable, which is confirmed when reviewing the survey provided by the Applicant.
- c. The exceptional practical difficulty was not created by the Applicant. The Applicant did not create the unusual shape of the Property or the exceptionally wide side yard setback requirement; both of which have resulted in a limited building envelope on the Property. The small building envelope has created the exceptional practical difficulty. Furthermore, the Applicant obtained necessary approval from the homeowners association confirming that the dwelling could be placed on the Property only to later realize that the surveying pin he relied upon was incorrect. The Applicant relied on this reasonable mistake to his detriment. The Board is convinced that the exceptional practical difficulty was not created by the Applicant but was created the lot's unique characteristics and was exacerbated by the Applicant's reasonable reliance on an incorrect surveying pin.
- 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 was constructed at an angle so only a portion of the front corner of the dwelling is located in the setback area. The Board is convinced that the encroachment would have no impact on the neighboring property to the northeast (Lot 61). In fact, no opposition from the owner of Lot 61 was submitted into the record which would evidence any impact on that lot. While the opposition testified that the dwelling should be built in compliance with the Code, they presented no evidence which convinced the Board that the variance would somehow alter the essential character of the neighborhood or be detrimental to the public welfare. Rather, the opposition noted that it would be impossible to bring the home into compliance with the Code while also meeting the

community's restrictive covenants. Presumably, the covenant requiring an attached garage is important to the community and failure to meet that requirement would have some impact on the community. Approval of this variance, however, will enable the attached garage to remain.

- 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 a reasonably sized dwelling on the Property. The Applicant does not intend to make any additions to the dwelling and only seeks 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. Norman Rickard, and Mr. Brent Workman. No Board Member voted against the Motion to approve the variance application. Mr. John Mills did not participate in the discussion or vote on 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 May 17, 2016