

**BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY**

**IN RE: JAMES W. BAKER**

**(Case No. 11768)**

A hearing was held after due notice on May 16, 2016. 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 5.4 feet from the thirty (30) feet front yard setback requirement for an existing dwelling. This application pertains to certain real property located on the south side of Nanticoke Lane approximately 103 feet west of Hiawatha Boulevard (911 Address: 31413 Nanticoke Lane, Dagsboro); said property being identified as Sussex County Tax Map Parcel Number 1-34-11.00-772.00.

1. The Board was given copies of the Application, an aerial photograph of the area, a portion of the tax map of the area, and a survey dated February 8, 2016.
2. The Board found that the Office of Planning & Zoning had received one letter in support of the Application and no letters in opposition to the Application.
3. The Board found that Shannon Carmean Burton, Esquire, was present on behalf of the Applicant and submitted a sworn affidavit from Annette M. Griffis, who was unable to attend the hearing.
4. The Board found that Mrs. Burton stated that the Applicant purchased the Property in February 2016 from Ms. Griffis who lives in Maryland and was unaware of any encroachments. Ms. Griffis purchased the Property as it currently exists in 2003.
5. The Board found that Mrs. Burton stated that the existing dwelling was built in 1985 and a Certificate of Compliance was issued in 1986. A survey completed in 2016 showed the encroachments.
6. The Board found that Mrs. Burton stated that there have been no modifications to the dwelling since it was constructed and an application for a variance was filed as soon as the encroachments were discovered.
7. The Board found that Mrs. Burton stated that the lot is irregular in shape and is at the end of a cul-de-sac creating a unique situation.
8. The Board found that Mrs. Burton stated that the Property cannot otherwise be developed in strict conformity at this time and the variance is necessary to enable reasonable use of the Property.
9. The Board found that Mrs. Burton stated that the exceptional practical difficulty was not created by the Applicant.
10. The Board found that Mrs. Burton stated that the variance does not alter the essential character of the neighborhood.
11. The Board found that Mrs. Burton stated that the variance does not impair the uses of the neighboring and adjacent property owners and the use is not detrimental to the public welfare.
12. The Board found that Mrs. Burton stated that there have never been any complaints from the neighbors.
13. The Board found that Mrs. Burton stated that the variance requested is the minimum variance to afford relief and that the variance is the least modification of the regulation at issue.

14. The Board found that no parties appeared in support of or in opposition to the Application.
15. 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 odd shape and since it is located on a cul-de-sac. The front portion of the lot is particularly oddly shaped and has an unusual building envelope due to this shape. The situation is also unique because the dwelling was constructed in 1985 and a Certificate of Compliance was issued shortly thereafter thereby indicating that the dwelling complied with the Sussex County Zoning Code. The Applicant only recently purchased the Property and did not place the dwelling on the lot. It is clear to the Board that the exceptional practical difficulty was created by the unique physical conditions of the lot and the unique circumstances related to the erroneous issuance of a Certificate of Compliance thirty years ago.
  - b. Due to the uniqueness of the Property and the situation, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The dwelling was constructed prior to the Applicant's purchase of the Property and the Applicant seeks to retain the dwelling but is unable to do so without violating the Sussex County Zoning Code. The dwelling has been on the Property for thirty years and with no additions made thereto. 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 Applicant.
  - c. The exceptional practical difficulty was not created by the Applicant. The Applicant did not build the dwelling. Rather, the dwelling was placed on the Property by a prior owner and a Certificate of Compliance was issued at that time. The Property is also uniquely shaped which has resulted in a small and oddly shaped building envelope thereby limiting the location where a house could be placed. The Property and the situation are unique and have created the exceptional practical difficulty for the Applicant.
  - 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 at least 1986 without recorded complaints. Despite the longstanding location of the dwelling and notification to neighbors, no complaints were noted in the record about its location. 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 Applicant has demonstrated that the variance sought will allow the Applicant to retain the dwelling on the Property in the same location it has been at since 1986. No additions to the dwelling are 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, 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 July 13, 2016