

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: DAVID P. ELLIOTT CONSTRUCTION, LLC

(Case No. 11777)

A hearing was held after due notice on June 6, 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 Applicant is seeking a variance 3.5 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 Beacon Circle approximately 380 feet east of Robinson Drive (911 Address: 65 Beacon Circle, Millsboro); said property being identified as Sussex County Tax Map Parcel Number 1-33-19.00-279.00.

1. The Board was given copies of the Application, a Certificate of Compliance dated February 2, 2016, an aerial photograph of the Property, a portion of the tax map of the area, and a survey dated March 9, 2016.
2. The Board found that the Office of Planning & Zoning received no correspondence in support of or in opposition to the Application.
3. The Board found that David Elliot was sworn in to testify about the Application. Shannon Carmean Burton, Esquire, presented the Application on behalf of the Applicants and submitted exhibits to the Board including a deed to the Property and pictures of the Property.
4. The Board found that Mrs. Burton stated that the Applicant purchased the Property in May 2014. The Property was vacant at that time. The Applicant is a builder and he built the dwelling with the intent to construct a dwelling to sell to a third party.
5. The Board found that Mrs. Burton stated that the dwelling was constructed and a Certificate of Compliance was issued for the dwelling. The Applicant contracted to sell the Property and a survey completed for settlement showed the encroachment.
6. The Board found that Mrs. Burton stated that the Property is unique in shape. The Property is located on a cul-de-sac and the cul-de-sac creates an irregular shaped lot.
7. The Board found that Mrs. Burton stated that the Applicant miscalculated the measurement due to the curve in the front property line.
8. The Board found that Mrs. Burton stated that the exceptional practical difficulty is due to the shape of the lot.
9. The Board found that Mrs. Burton stated that the Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code without removing a portion of the front of the dwelling which includes a small bedroom.
10. The Board found that Mrs. Burton stated that the variance is necessary to enable reasonable use of the Property.
11. The Board found that Mrs. Burton stated that the exceptional practical difficulty was not created by the Applicant since he did not create the lot and received a Certificate of Compliance after the dwelling was built.

12. The Board found that Mrs. Burton stated that the variance will not alter the essential character of the neighborhood and the use will not be detrimental to the public welfare.
13. The Board found that Mrs. Burton stated that variance will not impair the uses or development of the neighboring and adjacent properties. The Applicant has not received any complaints about the location of the dwelling.
14. The Board found that Mrs. Burton stated that the variance sought is the minimum variance to afford relief.
15. The Board found that Mrs. Burton stated that the variance represents the least modification of the regulation at issue as the variance will bring the existing dwelling into compliance with the Sussex County Zoning Code.
16. The Board found that Mr. Elliott, under oath, affirmed the statements made by Ms. Burton.
17. The Board found that Mr. Elliot testified that he made a mistake when measuring and the two interior markers were not marked by his surveyor. He has built several dwellings and has never had an issue with setback violations.
18. The Board found that Mr. Elliot testified that the edge of the paving does not meet with the front property line.
19. The Board found that Mr. Elliot testified that no additions were made to the dwelling after the Certificate of Compliance was issued.
20. The Board found that no parties appeared in support of or in opposition to the Application.
21. 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 in shape as the front property line is curved and located adjacent to a cul-de-sac. The curved property line has thus created an unusual building envelope. The situation is also unique because the Applicant relied on a surveyor but the surveyor failed to place interior markers on the Property. When setting the foundation of the home, the Applicant reasonably believed that the dwelling fit within the building envelope but the portion of the dwelling near the curved front property line encroaches into the setback area. Notably, however, the Applicant received a Certificate of Compliance from the Sussex County Planning & Zoning Office indicating that it also believed the dwelling met the setback requirements. It was only after a survey was completed that the encroachment was discovered. The Property is also unique because the front yard property line does not line up with the edge of paving for the adjacent road. This condition gives the impression that the front yard is larger than it actually is. The uniqueness of the situation and the conditions of the Property created an exceptional practical difficulty for the Applicant who seeks to retain the dwelling on the lot.
 - 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 placed on the Property but encroaches slightly into the front yard setback area. The Applicant is unable to retain the dwelling without violating the Sussex County Zoning Code. The dwelling would either have to be moved at a great and unnecessary expense to the Applicant or a significant portion of a small bedroom would have to be removed; also at great and unnecessary expense. 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 create the unique shape of the lot which has left an unusual front yard property line. Likewise, the Applicant reasonably believed that the dwelling complied with the setback requirements as a Certificate of Compliance was issued by the Planning & Zoning Department. It appears as though the dwelling was placed based in its location based on a misunderstanding of the actual location of the front property line. No interior surveying markers were placed by the surveyor. This misunderstanding was compounded by the fact that the edge of paving of the adjacent street does not line up with the front yard property line. If the front property line matched up with the existing edge of paving of the road, no variance would likely be needed. It is thus clear to the Board that the exceptional practical difficulty was created by the unique shape of the Property and the mistaken understanding as to where the dwelling could be placed.
- 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 pictures confirm that the dwelling has a neat appearance and the encroachment into the setback area is difficult to notice absent a survey. Despite notice 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. 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 August 2, 2016