

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: LEONARD L. MATHIAS & SUSAN J. MATHIAS

(Case No. 11794)

A hearing was held after due notice on July 11, 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 variances from the front yard setback requirement.

Findings of Fact

The Board found that the Applicants are seeking a variance 5.2 feet from the thirty (30) feet front yard setback requirement for an existing carport, a variance of 28.8 feet from the thirty (30) feet front yard setback requirement for an existing addition to the dwelling, and a variance of 26.1 feet from the thirty (30) feet front yard setback requirement for an existing dwelling. This application pertains to certain real property located on north side of Cherry Lane approximately 336 feet east of Cypress Drive in Angola Neck Park. (911 Address: 34295 Cherry Lane, Lewes); said property being identified as Sussex County Tax Map Parcel Number 2-34-12.18-123.00.

1. The Board was given copies of the Application, a survey of the Property, a letter from Christine Lewis dated April 6, 2016, a transcript of a Hearing and the Master's Draft Bench Report on Approval of Settlement, and a portion of the tax map of the area.
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 Susan Mathias was sworn in to testify about the Application. John Sergovic, Esquire, presented the case on behalf of the Applicants and submitted exhibits for the Board to review. The exhibits included a portion of the Sussex County Tax Map, aerial photographs of the area, an affidavit of George Yeager, a copy of the complaint filed in the Court of Chancery in Case Number 9124, a transcript of the Court of Chancery hearing, a deed to the Property, a Sussex County property card, Building Certificates, Certificates of Occupancy, tax releases, a well permit, a letter from the Delaware Department of Transportation, a survey of the Property dated November 12, 2015, a violation notice from the Sussex County Planning & Zoning Department, and a Angola Neck Park subdivision plot.
4. The Board found that Mr. Sergovic stated that the Applicants discovered that a portion of the existing dwelling was located in an adjacent cul-de-sac.
5. The Board found that Mr. Sergovic stated that the cul-de-sac was never actually developed and exists only on the development plan.
6. The Board found that Mr. Sergovic stated that the Property is irregularly shaped and unique due to the cul-de-sac and the unique shape of the Property has created an exceptional practical difficulty for the Applicants.
7. The Board found that Mr. Sergovic stated that the builder placed the dwelling in the cul-de-sac under the mistaken belief that there was no cul-de-sac. The builder believed Cherry Lane to be a straight road and that the edge of the road was the front line of the Property. Cherry Lane was originally a straight road on the original subdivision plan for the community but the plan was amended in the 1970s to allow for a cul-de-sac; though the cul-de-sac was never constructed.

8. The Board found that Mr. Sergovic stated that the Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code. The existing manufactured home and addition cannot be moved into compliance.
9. The Board found that Mr. Sergovic stated that an adverse possession claim against the homeowners association was filed in the Court of Chancery.
10. The Board found that Mr. Sergovic stated that the homeowners association was not active and the Court appointed a receiver on behalf of the association. A settlement agreement was reached between the Applicants and the association whereby a portion of the paper cul-de-sac was deeded to the Applicants. This settlement agreement was approved by the Court of Chancery and the transcript of the hearing was submitted to the Board for review.
11. The Board found that Mr. Sergovic stated that the improvements are now out of the cul-de-sac but encroach into the setback areas.
12. The Board found that Mr. Sergovic stated that the exceptional practical difficulty was not created by the Applicants since they relied upon contractors to place the structures in compliance with the Sussex County Zoning Code.
13. The Board found that Mr. Sergovic stated that the cul-de-sac only exists on paper and errors were made when measuring from property lines.
14. The Board found that Mr. Sergovic stated that the Applicants received a Certificate of Compliance for the existing carport. The manufactured home was placed and received a Certificate of Compliance in 2004 and the addition was constructed and received a Certificate of Occupancy in 2005.
15. The Board found that Mr. Sergovic stated that there have been no violations or complaints about the improvements on the Property until suit was filed in the Court of Chancery.
16. The Board found that Mr. Sergovic stated that the Applicants have made every effort to bring the Property into compliance. For example, an existing shed has been moved into compliance.
17. The Board found that Mr. Sergovic stated that the variances do not alter the character of the neighborhood and the variances are the minimum variances to afford relief.
18. The Board found that Ms. Mathias, under oath, affirmed the statements made by Mr. Sergovic.
19. The Board found that Ms. Mathias testified that the structures cannot be moved into compliance and there have been no complaints from neighbors in the past.
20. The Board found that Ms. Mathias testified that she relied on contractors to build and place the structures in compliance with the Sussex County Zoning Code.
21. The Board found that no parties appeared in support of or in opposition to the Application.
22. 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 as it is irregularly shaped. The Property is adjacent to Cherry Lane which has been paved as a straight road but exists on the subdivision plan for the community as a cul-de-sac. The existence of the paper cul-de-sac has created an unusually shaped front yard but the lack of paving has created the appearance that the front yard of the Property is larger than it actually is. The unique shape of the Property has created an oddly shaped building envelope which was not noticed by the Applicants' builders when the structures were placed on the Property. Consequently, the structures were placed in the setback area. It is clear to the Board that the lot's unique characteristics have created an exceptional practical

difficulty for the Applicants who seek to retain these structures on the Property.

- b. Due to the uniqueness of the lot, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The structures have been located on the Property for many years and their encroachment into setback area went unnoticed until recently because the adjacent Cherry Lane is not paved as a cul-de-sac. The Applicants seek to retain the dwelling, addition, and carport but are unable to do so without violating the Sussex County Zoning Code. The Board is convinced that the variances are necessary to enable the reasonable use of the Property as the variances will allow the Applicants to retain these structures on the Property. The Board is convinced that the size, shape, and location of these structures 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 Applicants did not create the shape of the lot which limits the building envelope on the Property. Furthermore, the Applicants did not have control over the paving, or lack thereof, of Cherry Lane to fully develop the cul-de-sac. The lack of paving of the cul-de-sac gives the appearance that Cherry Lane is much smaller than laid out on the subdivision plan and, conversely, that the Property is larger. This situation is clearly unique and has created an exceptional practical difficulty for the Applicants. The Applicants also relied on builders to place the structures on the Property in compliance with the Sussex County Zoning Code only to later learn that the structures were located in the setback area. The Board is convinced that the Applicants' reasonably relied upon their builders and did not create the exceptional practical difficulty resulting from the builder error. The unique characteristics of the Property are clear when reviewing the survey. 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 error in placement by the builder.
- 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, addition, and carport will have no effect on the character of the neighborhood. The structures have been on the Property for many years and the Applicants received no complaints about their location until they initiated an adverse possession claim in the Court of Chancery. Notably, however, no one appeared at the hearing before the Board to oppose the variances. 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 represent the least modifications possible of the regulation at issue. The Applicants have demonstrated that the variances sought will allow the Applicants to retain structures on the Property. No additions to those structures are being proposed. The Board also noted that an encroaching shed will be brought into compliance.

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 September 13, 2016.