

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

**IN RE: LAHUNT, LLC**

**(Case No. 11807)**

A hearing was held after due notice on July 18, 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 Applicant is seeking a variance of 10.2 feet from the twenty (20) feet front yard setback requirement for an existing dwelling. This application pertains to certain real property located on the south side of Diane Drive approximately 155 feet south of Arabian Acres Road (911 Address: 29821 Diane Drive, Lewes); said property being identified as Sussex County Tax Map Parcel Number 3-34-10.00-73.00.

1. The Board was given copies of the Application, an aerial photograph of the Property, a survey of neighboring property dated April 28, 2016, a survey of the Property dated April 20, 2016, 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 Carlton Savage and Jordan Ashburn were sworn in to testify about the Application. Mr. Savage submitted an exhibit booklet for the Board to review.
4. The Board found that Mr. Savage testified that Pennoni Associates, Inc., staked the Property for the location of the dwelling and an error occurred when measuring because the measurements were based on a septic drawing. The septic design plan did not show the setback requirements.
5. The Board found that Mr. Savage testified that the surveyor's error has created a unique situation.
6. The Board found that Mr. Savage testified that the house was constructed ten (10) feet closer to the front yard property line than allowed. The dwelling was completed in June 2016 and the error was discovered when the final survey was submitted to Sussex County for approval after construction of the house. The septic system serving the home has also been installed.
7. The Board found that Mr. Savage testified that the Property fronts on Diane Drive which is a private road servicing four lots that were created in the 1970s. There is approximately 10-15 feet from the edge of paving of Diane Drive to the front yard property line. The Applicant owns the other lots on Diane Drive.
8. The Board found that Mr. Savage testified that the Property is unique because the lot is small as it only measures one-half acre.
9. The Board found that Mr. Savage testified that the Property is serviced by a septic system which takes up a large portion of the Property and is located near the middle of the Property.
10. The Board found that Mr. Savage testified that the Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code. The dwelling cannot be moved into compliance due to the location of the septic system.
11. The Board found that Mr. Savage testified that the exceptional practical difficulty was not created by the Applicant. The Applicant relied on the surveyor who made a mistake.

12. The Board found that Mr. Savage testified that the house sits the same distance from Diane Drive as the house on the adjacent property which fronts on Arabian Acres Road but is also located on Diane Drive.
13. The Board found that Mr. Savage testified that the variance requested is the minimum variance to afford relief.
14. The Board found that Mr. Ashburn testified that he relied on his surveyor to stake out the Property and the surveyor made an error.
15. The Board found that no parties appeared in support of or in opposition to the Application.
16. 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 a small lot with a septic system located near the middle of the Property. The location of the septic system greatly limits the already small building envelope on the Property. Consequently, the Applicant has limited area where he could place a dwelling. The situation is also unique because the Applicant relied on his surveyor to stake out the proper location for the dwelling in compliance with the Sussex County Zoning Code only to learn after the home was constructed that the surveyor made a mistake. It is clear to the Board that this mistake coupled with the lot's unique characteristics have created an exceptional practical difficulty for the Applicant who seeks to retain an existing dwelling on the lot.
  - b. Due to the uniqueness of the lot, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The location of the septic system greatly limits the buildable area of the Property and the dwelling cannot be relocated to fit in compliance with the Code. The Applicant seeks to retain an existing dwelling but is unable to do so without violating the Sussex County Zoning Code. The Board is convinced that the variance is necessary to enable the reasonable use of the Property as the variance will allow the Applicant to retain an existing dwelling on the Property. The Board is convinced that the shape and location of the 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 size of the lot or stake out the placement of the septic system and the dwelling. Rather, the Applicant relied on his surveyor to meet stake out the Property properly only to find out after the home was constructed that an error was made. This surveying error has created an exceptional practical difficulty which was exacerbated by the small size of the lot; as is clearly shown when reviewing the survey.
  - 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 is approximately the same distance from Diane Drive as the house located to the west and there is approximately 10-15 feet between the edge of paving of Diane Drive and the front property line thereby giving the illusion that the front yard is larger than it actually is. It is, thus, unlikely that the encroachment would even be noticed if not for a survey. 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.

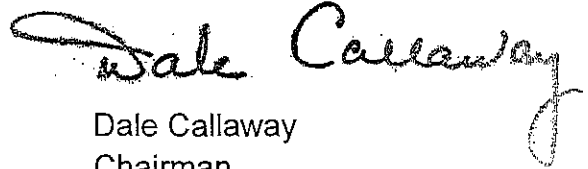
- e. The variance sought is the minimum variance necessary to afford relief and the variance requested represent the least modification possible of the regulation at issue. The Applicant has demonstrated that the variance sought will allow the Applicant to retain the existing dwelling on the Property. No additions to the dwelling into the setback areas are being 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 September 20, 2016.