

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: REALISTA B.R. RODRIGUEZ

(Case No. 11842)

A hearing was held after due notice on September 19, 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 rear yard setback requirement.

Findings of Fact

The Board found that the Applicant is seeking a variance of 1.2 feet from the twenty (20) feet rear yard setback requirement for an existing dwelling. This application pertains to certain real property located on the property is located on the west side of Bridgeway Drive West approximately 919 feet west of Woodland Circle in the Angola by the Bay Subdivision. (911 Address: 23254 Bridgeway Drive West, Lewes); said property being identified as Sussex County Tax Map Parcel Number 2-34-11.20-184.00.

1. The Board was given copies of the Application, a survey of the Property dated November 8, 1994, a survey of the Property dated July 18, 2016, an aerial photograph of the Property, and a portion of the tax map.
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 Shannon Carmean Burton, Esquire, presented the case on behalf of the Applicant and submitted exhibits for the Board to review.
4. The Board found that Mrs. Burton stated that the Property is located in Angola by the Bay and the Applicant purchased the Property in 1994.
5. The Board found that Mrs. Burton stated that a Certificate of Compliance was issued for the dwelling in 1986 and a survey completed in 1994 did not show the encroachment.
6. The Board found that Mrs. Burton stated that the Applicant entered into a contract to sell the Property and the survey completed in 2016 for settlement showed the encroachment of the dwelling into the rear yard setback area.
7. The Board found that Mrs. Burton stated that no modifications have been made to the dwelling since the Applicant purchased the Property and the Applicant was unaware of the encroachment until the 2016 survey was completed.
8. The Board found that Mrs. Burton stated that the Property is unique because it is irregularly shaped.
9. The Board found that Mrs. Burton stated that the Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code and the variance is necessary to enable reasonable use of the Property.
10. The Board found that Mrs. Burton stated that the Applicant did not create the exceptional practical difficulty.
11. The Board found that Mrs. Burton stated that the variance does not alter the essential character of the neighborhood and the use is not detrimental to the public welfare.
12. The Board found that Mrs. Burton stated that there have not been any complaints from the neighbors.
13. The Board found that Mrs. Burton stated that the variance is the minimum variance necessary to afford relief and 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 clearly unique as it is an oddly shaped lot. The odd shape of the Property has created an exceptional practical difficulty for the Applicant because the unique physical conditions have created an unusual and oddly shaped building envelope for the Applicant. Additionally, the Applicant did not place the dwelling on the Property so close to the rear yard property line. A previous owner placed the dwelling in that location and reasonably believed it complied with the Sussex County Zoning Code only to find out later that it did not comply with the Code.
 - 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 approximately thirty (30) years ago by a prior owner and the Applicant seeks to retain the dwelling in its existing location 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 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 Property has a unique shape which has created an oddly shaped building envelope. Furthermore, the Applicant did not build the dwelling. Rather, the dwelling was placed on the Property by a prior owner who reasonably believed that the dwelling complied with the Code because a Certificate of Compliance was issued only to later find out the dwelling did not comply with the Code. The Board finds that the previous owner relied on this Certificate of Compliance to his detriment. Since the Property has a unique shape and the Applicant did not place the dwelling on the Property, the Board find that the Applicant did not create the exceptional practical difficulty.
 - 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 dwelling has been on the Property for approximately thirty (30) years without recorded complaints and the encroachment into the setback area is quite minor. 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. The Board also notes that the rear of the Property, where the encroachment is located, is adjacent to common areas owned by the homeowners association.
 - 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 in its existing location. No additions to the dwelling are being proposed.

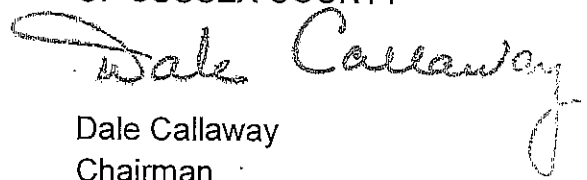
- f. The Board notes that the statements made by Mrs. Burton are confirmed by a sworn affidavit submitted into the record by a prior owner; thus the Board finds Mrs. Burton's statements to be credible recitations of the statements made in the affidavit.

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 November 22, 2016.