

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: MICHAEL J. SNEDAKER AND LAYNE B. SNEDAKER

(Case No. 11848)

A hearing was held after due notice on October 3, 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 1.2 feet from the thirty (30) feet front yard setback requirement for an existing attached garage. This application pertains to certain real property located on the east side of Derrickson Drive approximately 512 feet south of Old Mill Bridge Road (911 Address: 36379 Derrickson Drive, Selbyville); said property being identified as Sussex County Tax Map Parcel Number 5-33-12.00-50.00.

1. The Board was given copies of the Application, a survey dated May 18, 2016, a copy of the Certificate of Compliance, 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 Michael Snedaker & Layne Snedaker were sworn in to testify about the Application. Ray Tomasetti, Jr., Esquire presented the case to the Board on behalf of the Applicants and submitted a picture for the Board to review.
4. The Board found that Mr. Tomasetti stated that the Applicants purchased the Property in May 2016. The dwelling with the attached garage was built in 1982 and the Certificate of Compliance was issued at that time.
5. The Board found that Mr. Tomasetti stated that a survey completed for settlement showed the encroachment.
6. The Board found that Mr. Tomasetti stated that the Property is unique in size and shape.
7. The Board found that Mr. Tomasetti stated that the Property cannot be developed in strict conformity with the Sussex County Zoning Code.
8. The Board found that Mr. Tomasetti stated that the dwelling and garage were placed on the Property by a prior owner.
9. The Board found that Mr. Tomasetti stated that the exceptional practical difficulty was not created by the Applicants.
10. The Board found that Mr. Tomasetti stated that the variance does not alter the essential character of the neighborhood and there have been other variances granted in the neighborhood.
11. The Board found that Mr. Tomasetti stated that the variance is the minimum variance necessary to afford relief.
12. The Board found that Mr. Snedaker, under oath, affirmed the statements made by Mr. Tomasetti.
13. The Board found that Mr. Snedaker testified that the rear yard has some flooding issues.
14. The Board found that Mr. Snedaker testified that there have been no additions made to the dwelling since 1982
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 clearly unique as it is an oddly shaped lot bordering on Dirickson Creek. The unusual shape of the Property is clear from a review of the survey as the north side of the Property is substantially deeper than the south side of the Property. The angle of the rear yard and the curvature of the front yard have resulted in an oddly shaped building envelope. The small building envelope is further limited by the fact that the rear of the Property is subject to flooding from Dirickson Creek. These unique physical conditions have thus created an exceptional practical difficulty for the Applicants. Additionally, the Applicants did not place the attached garage on the Property so close to the front yard property line. A previous owner placed the attached garage 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 attached garage was constructed approximately thirty-four (34) years ago by a prior owner and the Applicants seek to retain the attached garage in its existing location but are 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 attached garage to remain on the Property. The Board is convinced that the shape and location of this attached garage are also reasonable, which is confirmed when reviewing the survey provided by the Applicants.
 - c. The exceptional practical difficulty was not created by the Applicants. The Property has a unique shape which has created an oddly shaped building envelope and the aforementioned flooding issues further limit the building envelope. Furthermore, the Applicants did not build the garage. Rather, the structures were placed on the Property by a prior owner who reasonably believed that the structures complied with the Code because a Certificate of Compliance was issued only to later find out the dwelling and garage 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 Applicants did not place the dwelling and garage on the Property, the Board find that the Applicants 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 and garage have been on the Property for approximately thirty-four (34) years without recorded complaints. The encroachment into the setback area is also quite minor. Despite the longstanding location of the dwelling and garage and notification to neighbors, no complaints were noted in the record about their 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 Applicants have demonstrated that the variance

sought will allow the Applicants to retain the dwelling and garage in their existing location. No additions to the dwelling and garage 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 December 13, 2016