

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: JANET S. WEISMAN

(Case No. 11902)

A hearing was held after due notice on January 9, 2017. The Board members present were: Mr. Dale Callaway, Mr. John Mills, Mr. Jeff Hudson, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for variances from the side yard setback requirement.

Findings of Fact

The Board found that the Applicant is seeking a variance of 4.2 feet from the fifteen (15) feet side yard setback requirement on the north side and a variance of 4.1 feet from the required fifteen (15) feet side yard setback requirement on the north side for an existing dwelling. This application pertains to certain real property located on the east side of Pebble Drive approximately 1,156 feet north of Thorogoods Road (911 Address: 118 Pebble Drive, Dagsboro); said property being identified as Sussex County Tax Map Parcel Number 2-33-6.00-163.00.

1. The Board was given copies of the Application, a survey of the Property dated October 31, 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 one (1) letter of opposition to the Application and no correspondence in support of the Application.
3. The Board found that Dustin Oldfather was sworn in to testify about the Application.
4. The Board found that Mr. Oldfather testified that the dwelling was built in 1979 and encroached into the side yard setback on the north side.
5. The Board found that Mr. Oldfather testified that it is unclear whether the encroachment was due to a surveying error at the time.
6. The Board found that Mr. Oldfather testified that it is also possible that the location of the septic system led to the placement of the home closer to the north side yard property line. The septic system is on southeast side of the Property.
7. The Board found that Mr. Oldfather testified that the encroachment was discovered when a recent survey was completed. This survey was prepared in relation to a sale of the Property.
8. The Board found that Mr. Oldfather testified that the dwelling cannot be moved into compliance.
9. The Board found that Mr. Oldfather testified that the seller of the Property suffers from dementia and has moved with family out-of-state.
10. The Board found that Mr. Oldfather testified that the encroachment has gone unnoticed for over forty (40) years.
11. The Board found that Mr. Oldfather testified that the difficulty was not created by the Applicant.
12. The Board found that Mr. Oldfather testified that the variance will not alter the essential character of the neighborhood.
13. The Board found that Mr. Oldfather testified that the variances requested are the minimum variances necessary to afford relief.
14. The Board found that Mr. Oldfather testified that the current owner purchased the Property in 1993.
15. The Board found that Mr. Oldfather testified that the house is on a foundation.
16. The Board found that Mr. Oldfather testified that no additions have been made to the dwelling.

17. The Board found that Paul Reiger was sworn in and testified in support of the Application.
18. The Board found that one (1) party appeared in support of the Application.
19. The Board found that no parties appeared in opposition to the Application.
20. 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 serviced by a septic system on the southeast side of the lot which limits the buildable area of the lot. The situation is also unique because the Applicant purchased the Property in 1993 yet the dwelling, which encroaches into the setback area, was built in 1979. This unique situation and these unique physical conditions have created an unusual and limited building envelope for the Applicant.
 - b. Due to the uniqueness of the Property, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The dwelling was constructed many years ago and the Applicant seeks to retain the existing dwelling on the same footprint but is unable to do so without violating the Sussex County Zoning Code. The dwelling is on a foundation and cannot be moved into compliance. 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 also convinced that the size, 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 location of the septic system has created a limited building envelope for the Property and limited the area where a home can be placed. The dwelling was placed on the Property by a prior owner and the Applicant made no additions to the dwelling to increase the encroachment into the setback areas. The encroachments, in fact, were not discovered until recently – nearly 40 years after the existing dwelling had been constructed. The Applicant did not build the dwelling or place the septic system on the Property. Rather, those conditions pre-existed the Applicant's acquisition of the Property. These unique physical conditions have resulted in a limited building envelope and have created the exceptional practical difficulty for the Applicant.
 - 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 dwelling has been on the Property for many years without recorded complaints and no additions to the home are being proposed. 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 notes that the letter received in opposition to the Application states that the neighbor is opposed to any new construction but does not oppose variances inasmuch as the variances will allow the existing dwelling to remain in its existing location without an addition thereto. As previously noted, the Applicant does not seek to make an addition to the dwelling.
 - e. The variances sought are the minimum variances necessary to afford relief and the variances requested represent the least modifications possible of

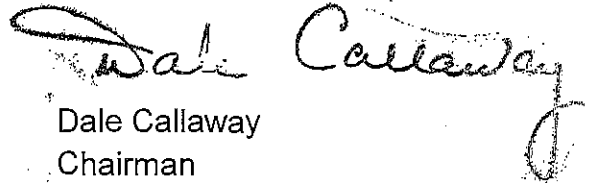
the regulations at issue. The Applicant has demonstrated that the variances sought will allow the Applicant to retain the existing dwelling on the same footprint. No additions to the dwelling are being proposed. The Board also notes that the dwelling cannot be moved into compliance since the house is on a foundation and due to the location of the septic system.

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, and Mr. Brent Workman. No Board Member voted against the Motion to approve the variance application. Mr. Norman Rickard did not participate in the discussion or vote on this 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

2/21/2017