

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: ROBERT BUCKLER

(Case No. 11968)

A hearing was held after due notice on June 5, 2017. The Board members present were: Mr. Dale Callaway, Ms. Ellen Magee, Mr. John Mills, 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 Applicant is seeking a variance of 0.2 feet from the thirty (30) feet front yard setback requirement for an existing dwelling. This application pertains to certain real property located on the east side of Derrickson Drive approximately 609 feet +/- southeast of Old Mill Bridge Road (SCR 381) (911 Address: 36393 Derrickson Drive, Selbyville); said property being identified as Sussex County Tax Map Parcel Number 5-33-12.00-51.00.

1. The Board was given copies of the Application, an aerial photograph of the Property, a proposed site plan dated November 28, 2016, drawings and photographs of the dwelling, a survey dated December 30, 2016, 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 Christina Wagner and Robert Buckler were sworn in to testify about the Application and submitted exhibits to the Board to review.
4. The Board found that Ms. Wagner testified that she represents Insight Homes who is the builder of the dwelling.
5. The Board found that Ms. Wagner testified that the variance request is for a bay window that extends into the front yard setback area.
6. The Board found that Ms. Wagner testified that the Property is unique because it is located in a flood zone and the dwelling had to be placed closer to the front yard to avoid the flood zone.
7. The Board found that Ms. Wagner testified that there was a structure on the Property previously but the builder did not place the dwelling on the same location in order to avoid having to use fill dirt.
8. The Board found that Ms. Wagner testified that the exceptional practical difficulty was not created by the Applicant.
9. The Board found that Ms. Wagner testified that the surveyor made a measuring error of 3 inches. The surveyor only measured the foundation when preparing the site plan and did not take into account the bay window. The site plan and the as-built survey show the difference in measurements.
10. The Board found that Ms. Wagner testified that the encroachment is not noticeable without a survey.
11. The Board found that Mr. Buckler testified that the house shown on the aerial photograph has been removed.
12. The Board found that Mr. Buckler testified that Derrickson Drive is a gravel and dirt road and the edge of Derrickson Drive varies along the front property line.
13. The Board found that one (1) party appeared in support of the Application.
14. The Board found that no parties appeared 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.

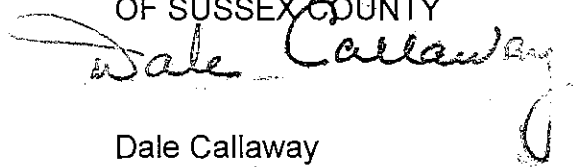
- a. The Property is unique as it is irregularly shaped and is located in a flood zone. The unique shape of the Property has created an oddly shaped building envelope and the Applicant planned to place the dwelling closer to the front yard to avoid the flood zone. It is clear to the Board that the lot's unique characteristics have resulted in a limited building envelope and have created an exceptional practical difficulty for the Applicant who seeks to retain the dwelling on the Property. The situation is also unique because the builder or its surveyor made a mistake in the construction process. The site plan demonstrated that the home was to be located within the setback area but the as-built survey prepared after the construction of the home was complete demonstrates that approximately 3 inches of a bay window encroach into the front yard. This unique situation has also created an exceptional practical difficulty 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 Property is located in a flood zone and the home had to be placed closer to the front property line to avoid the flood zone. The flood zone resulted in a smaller building envelope. The dwelling was constructed by a builder and the builder made a slight error in placing the home. The Applicant seeks permission to retain the 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 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 is an oddly shaped lot with an oddly shaped building envelope. The Board notes that the Property is in a flood zone which further limits the buildable area. In spite of the unique building envelope, the Applicant relied on the builder to construct the dwelling in compliance with the Sussex County Zoning Code only to later learn that an error was made. These unique physical conditions have resulted in a limited building envelope and have created the exceptional practical difficulty for the Applicant.
- 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 encroaches mere inches into the setback area and it is unlikely that the encroachment would be noticeable without a survey. Notably, no complaint was 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.
- 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 variances sought will allow the Applicant to retain the existing dwelling on the same footprint. No additions to the dwelling are 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, Ms. Ellen Magee, 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 August 8, 2017.