

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: GEORGE COLE, JR.

(Case No. 12000)

A hearing was held after due notice on August 7, 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 2.4 feet from the thirty (30) feet front yard setback requirement for an existing dwelling. This application pertains to certain real property located at the south side of Birch Street approximately 294 feet west of Parker House Road (911 Address: 37648 Birch Street, Ocean View); said property being identified as Sussex County Tax Map Parcel Number 1-34-16.00-462.00.

1. The Board was given copies of the Application, a survey dated May 10, 2017, an aerial photograph of the Property, a Certificate of Occupancy / Compliance, a letter of support from Robert Charles Bedell, and a portion of the tax map of the area.
2. The Board found that the Office of Planning & Zoning received two (2) letters in support of the Application and no correspondence in opposition to the Application.
3. The Board found that George Cole, Jr., was sworn in to testify about the Application.
4. The Board found that Mr. Cole testified that the Property is irregularly shaped.
5. The Board found that Mr. Cole testified that a portion of the dwelling was placed in the front yard setback area. The Applicant received a Certificate of Compliance from Sussex County and believed that the home was placed in compliance with the Sussex County Zoning Code. The home has also been converted to a Class "C" home.
6. The Board found that Mr. Cole testified that he later put the home for sale and obtained a survey which showed the encroachment.
7. The Board found that Mr. Cole testified that the home cannot be moved and has been on the Property for over a year.
8. The Board found that Mr. Cole testified that there is no opposition from neighbors and he owns the neighboring property that would be most affected by the encroachment. He has received no complaints from neighbors about the location of the home.
9. The Board found that Mr. Cole testified that, when the home was initially inspected by Sussex County officials, he was told that the home complied with the Zoning Code.
10. The Board found that Mr. Cole testified that a survey pin is off from one corner of the Property.
11. The Board found that Daniel Ray was sworn in to testify with questions about the Application. Mr. Ray testified that he lives in the community and that he does not oppose the Application.
12. The Board found that two (2) parties appeared in support of the Application.
13. The Board found that no parties appeared in opposition to the Application.
14. 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 unrebutted, 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 due to its irregular shape. The front part of the lot is angled thereby making the east side of the Property deeper than the west side of the Property. The unique shape of the Property has created an oddly shaped building envelope for the Applicant and has created an exceptional practical difficulty. The situation is also unique because the surveying pin on the northeast corner of the Property is incorrectly placed. Prior to placing the home, the Applicant had the site inspected by Sussex County officials and the Applicant received a Certificate of Compliance after the home was placed. Notably, only a small corner of the home encroaches into the front yard setback area. It appears likely to the Board that the misplaced surveying pin may have contributed to the error in placement of the home. Ultimately, the Board finds that the uniqueness of the Property and the situation have created an exceptional practical difficulty for the Applicant.
- 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 surveying stakes for the Property were incorrectly placed on the Property on the side of the lot that has a unique angle. The home is a Class "C" structure and cannot be moved into compliance with the Code. The Applicant received all necessary approvals and permits for the placement of the home only to later learn that it did not actually meet the Code's requirements. Ultimately, the Applicant seeks to retain the home 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 a reasonably sized home to remain on the Property. The Board is convinced that the shape and location of the home 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 reasonably relied on the accuracy of the surveying stakes to place the home in compliance with the Sussex County Zoning Code. Since the surveying stake was misplaced, the Applicant reasonably believed that the home complied with the Code only to find out a year later that the home encroached into the setback area. Likewise, the Applicant relied on the Sussex County Planning & Zoning Office and reasonably believed the home complied with the setback requirements because a Certificate of Compliance was issued after the home was placed. The misplacement of the surveying stakes and the issuance of a Certificate of Compliance in error has created the exceptional practical difficulty for the Applicant and the Board finds that this error was not self-created by the Applicant. Likewise, the unique angle of the front property line has also created an exceptional practical difficulty for the Applicant because the angle is quite steep and creates an odd building envelope.
- 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 home will have no effect on the character of the neighborhood. The home has been on the Property in its current location for over a year without complaint. Neighbors have submitted letters in support of the request. 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 variance

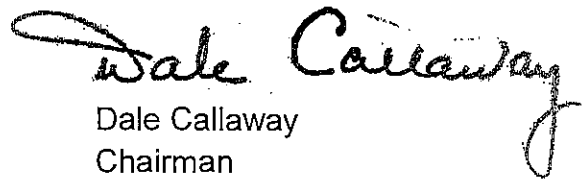
sought will allow the Applicant to retain the home on the Property. No additions or modifications to the home are proposed. Furthermore, the Board notes that only a small corner of the home encroaches into the setback area.

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 September 19, 2017