

**BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY**  
**IN RE: ROBERT J. DIPALMA & CYNTHIA A. DIPALMA, TRUSTEES**  
**(Case No. 12055)**

A hearing was held after due notice on November 20, 2017. The Board members present were: Mr. Dale Callaway, Ms. Ellen Magee, Mr. Bruce Mears, Mr. John Mills, and Mr. Brent Workman.

Nature of the Proceedings

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

Findings of Fact

The Board found that the Applicants are seeking a variance of 5.7 feet from the fifteen (15) feet side yard setback requirement on the west side for an existing dwelling. This application pertains to certain real property located on the south side of Rico Drive, approximately 300 feet east of East Sandy Cove Road (911 Address: 38464 Rico Drive, Selbyville); said property being identified as Sussex County Tax Map Parcel Number 5-33-19.00-640.00.

1. The Board was given copies of the Application, an aerial photograph of the Property, a survey of the Property dated August 16, 2017, and a portion of the tax map of the area.
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 Robert DiPalma was sworn in to testify about the Application. Manaen Robinson, Esquire, presented the case on behalf of the Applicants and submitted exhibits for the Board to review.
4. The Board found that Mr. Robinson stated that the Applicants purchased the Property in August 2017. The previous owner, who purchased the Property in 2001, passed away earlier this year.
5. The Board found that Mr. Robinson stated that the garage on the west side of the Property encroaches into the side yard setback requirement. The house was constructed in 1988. The garage was constructed in 1989 and is attached to the house.
6. The Board found that Mr. Robinson stated that the Property is unique because it is narrow and wooded.
7. The Board found that Mr. Robinson 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.
8. The Board found that Mr. Robinson stated that the exceptional practical difficulty was not created by the Applicants.
9. The Board found that Mr. Robinson stated that the variance will not alter the essential character of the neighborhood nor will the variance impair the uses of neighboring properties.
10. The Board found that Mr. Robinson stated that the variance requested is the minimum variance necessary to afford relief.
11. The Board found that Mr. DiPalma affirmed that the statements made by Mr. Robinson as true and correct.
12. The Board found that Mr. Robinson stated that there have been no complaints from neighbors.
13. The Board found that Mr. DiPalma testified that the Property is serviced by a septic system but the Property is being converted to sewer. The septic system is located in the building envelope.

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 unique due to its size and shape as it is narrow and has an angled rear lot line as evidenced by the survey. These unique conditions have created a limited buildable area available to the Applicants and have created an exceptional practical difficulty for the Applicants who seek to retain an existing dwelling on the lot. The Board notes that the building envelope is further constrained by the septic system which is located in the building envelope.
  - b. Due to the uniqueness of the lot, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property has a unique size and the buildable area thereof is limited due to its size. The Applicants seek to retain an existing dwelling of reasonable size 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 a reasonably sized existing dwelling to remain on the Property. The dwelling has been in its current location for nearly 30 years. The Board is convinced that the shape and location of the dwelling 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 Applicants did not create the unusual size of the Property. The Property was developed by a prior owner and all structures were on the Property when the Applicants purchased the lot. Furthermore, the unique lot size has resulted in a limited building envelope on the Property and the small building envelope has created the exceptional practical difficulty because it greatly restricts the Applicants' ability to retain the existing dwelling on the Property. The unique characteristics of the Property are clear when reviewing the survey. The Board is convinced that the exceptional practical difficulty was not created by the Applicants but was created the lot's unique characteristics and by the placement of the dwelling by a prior owner.
  - 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 dwelling will have no effect on the character of the neighborhood. The dwelling has been on the Property for nearly 30 years and 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.
  - 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 existing dwelling on the lot. No additions or modifications 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. Bruce Mears, Mr. John Mills, 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 January 23, 2018.