

**BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY**

**IN RE: THOMAS W. GARASIC**

**(Case No. 12063)**

A hearing was held after due notice on December 11, 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 front yard setback requirement.

Findings of Fact

The Board found that the Applicant is seeking a variance of 3.3 feet from the thirty (30) feet front yard setback requirement for an existing dwelling. This application pertains to certain real property located on the west side of Bennett Drive, approximately 600 feet south of the intersection of Sherwood Forest and Robin Hood Loop (911 Address: 32346 Bennett Drive, Millsboro); said property being identified as Sussex County Tax Map Parcel Number 2-34-23.00-200.01.

1. The Board was given copies of the Application, a survey of the Property dated August 28, 2017, an aerial photograph of the Property, and a portion of the tax map of the area.
2. The Board found that the Office of Planning & Zoning received one (1) letter in support of the Application and no correspondence in opposition to the Application.
3. The Board found that Thomas Garasic was sworn in and testified about the Application.
4. The Board found that Mr. Garasic testified that he owns two lots (the Property and the adjacent Lot 16). The Property was previously vacant and was subdivided from a larger parcel.
5. The Board found that Mr. Garasic testified that the dwelling encroaches into the front yard setback area but is approximately 40 feet from the edge of paving of Bennett Drive.
6. The Board found that Mr. Garasic testified that the dwelling was placed too close to the front property line due to a measurement and placement error.
7. The Board found that Mr. Garasic testified that, if the distance from the road to the front property line was 10 feet as he thought, there would be no encroachment.
8. The Board found that Mr. Garasic testified that the house lines up perfectly with the house next door on Lot 16 but the house on the adjacent property is slightly askew. The home on Lot 16 meets the setback requirements.
9. The Board found that Mr. Garasic testified that there are large trees in the rear yard and he placed the home closer to the front yard.
10. The Board found that Mr. Garasic testified that all electric, plumbing, sewer, and gas utilities are installed and would be difficult to reinstall. The septic system is in the side yard.
11. The Board found that Mr. Garasic testified that the encroachment is not noticeable.
12. The Board found that Mr. Garasic testified that he pulled the permit for the home but he relied on Danny Dorfman to place the home.
13. The Board found that Mr. Garasic testified that the home is located on footers.
14. The Board found that Mr. Garasic testified that he discussed the matter with some neighbors and they do not object to the variance.
15. The Board found that Mr. Garasic testified that the concrete monument marking his property is located in the right-of-way.

16. The Board found that Mr. Garasic testified that he had a survey prior to placing the home but the survey did not show the distance from the front property line to the edge of paving.
17. The Board found that no parties appeared in support of or in opposition to the Application.
18. The Board tabled the Application until December 18, 2017, at which time the Board discussed and voted on the Application.
19. 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 a measurement and placement error which gave the Applicant the incorrect impression that the Property was larger than it actually was. The front corner concrete monument is actually located in the adjacent right-of-way and gives a false impression as to the size of the front yard. The front yard also appears significantly larger because Bennett Drive is not paved to the front property line. Rather, there is a significant gap between the edge of paving and the front property line which also gives the false impression as to the size of the front yard. The misunderstanding as to the location of the front property line led to the placement of the dwelling in the front yard setback area. The Applicant is unable to move the dwelling into compliance due to the location of existing trees and utilities. The Board finds that the situation is quite unique and has created an exceptional practical difficulty for the Applicant who seeks to retain a dwelling on the lot.
  - b. Due to the uniqueness of the situation, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The surveying stake for the Property was incorrectly placed or moved and this error led to an encroachment of a dwelling into the front yard setback area. The dwelling is a long structure with utilities and cannot be moved into compliance. The Applicant seeks to retain the dwelling 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 dwelling to remain on the Property. 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 Applicant.
  - c. The exceptional practical difficulty was not created by the Applicant. The Applicant reasonably relied on his contractor to place the dwelling in compliance with the Sussex County Zoning Code only to find out after the fact that the home encroached into the setback area. This error as well as the fact that the surveying stake was misplaced and the edge of paving of the adjacent Bennett Drive did not match the front property line have created the exceptional practical difficulty for the Applicant and the Board finds that this error was not self-created by 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 Board is convinced that the dwelling will have no effect on the character of the neighborhood. Though the dwelling encroaches into the setback area, there is a significant gap between the front property line and the edge of paving so the encroachment is unlikely to be noticed. 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.

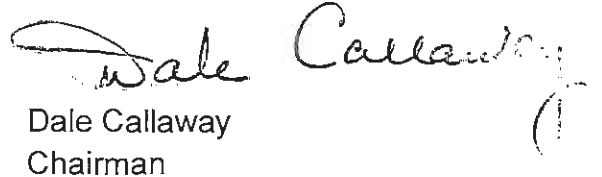
- e. The variance sought is the minimum variance necessary to afford relief and the variance requested represents the least modification possible of the regulation at issue. The Applicant has demonstrated that the variance sought will allow the Applicant to retain the dwelling on the Property. No additions 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 February 20, 2018.