

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: NANCY KAISER (Case No. 11104)

A hearing was held after due notice on December 10, 2012. The Board members present were: Mr. Jeff Hudson, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for variances of the rear yard and front yard setback requirements.

Findings of Fact

The Board found that the Applicant was seeking a variance of 9.99 feet from the 10 foot rear yard setback requirement for an existing screen porch and a variance of 0.6 feet from the 25 foot front yard setback for an existing dwelling. The Applicant has requested that the aforementioned requested variances be granted as it pertains to certain real property located north of Route 1 (Coastal Highway) and east of Road 270A (Munchy Branch Road) northeast of Beaver Dam Reach, being Lot 50 Phase II within Woods at Seaside development; said property being identified as Sussex County Tax Map Parcel Number 3-34-13.00-1256.00. After a hearing, the Board made the following findings of fact:

1. Nancy Kaiser and Peter Giaquinto were sworn in and testified on behalf of the Application.
2. The Board found that Ms. Kaiser testified that Peter Giaquinto purchased the Property in 2010 and that she is a contractor who built a screen porch for Mr. Giaquinto.
3. The Board found that Ms. Kaiser testified that the screen porch was built on the existing deck and that they believed the deck was in compliance with the setback requirements.
4. The Board found that Ms. Kaiser testified that the adjacent neighbor has a similar screen porch which encroaches into the setback area.
5. The Board found that Ms. Kaiser testified that she obtained a building permit for the screen porch.
6. The Board found that Ms. Kaiser testified that the rear yard is adjacent to common area and the Delmarva Power & Light right of way area for transmission lines.
7. The Board found that Ms. Kaiser testified that an exceptional practical difficulty exists due to the deck.
8. The Board found that Ms. Kaiser testified that the Homeowners Association approved the screen porch.
9. The Board found that Ms. Kaiser testified that an adjacent property has had a similar variance granted for a porch.
10. The Board found that Ms. Kaiser testified that a survey completed in 2002 does not show the deck.
11. The Board found that Ms. Kaiser testified that the variances are necessary to enable reasonable use of the Property.
12. The Board found that Ms. Kaiser testified that the Applicant did not create the difficulty.
13. The Board found that Ms. Kaiser testified that they were not aware the dwelling did not meet the front yard setback requirement.
14. The Board found that Ms. Kaiser testified that the Property cannot be built in strict conformity with the Sussex County Zoning Ordinance.

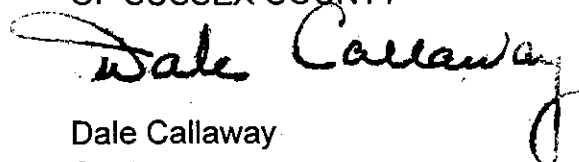
15. The Board found that Ms. Kaiser testified that the use is not detrimental to public welfare.
16. The Board found that Ms. Kaiser testified that the variances sought are the minimum variances necessary to afford relief.
17. The Board found that Ms. Kaiser testified that the deck and porch would have to be removed in order to comply with the setback requirements.
18. The Board found that Mr. Giaquinto testified that he purchased the Property in November 2010 and that the dwelling has not moved since he purchased it.
19. The Board found that Ms. Kaiser testified that the situation is unique because the dwelling is existing and cannot be moved.
20. The Board found that Ms. Kaiser testified that moving the dwelling would create other setback issues.
21. The Board found that Ms. Kaiser testified that the dwelling has no adverse effect on the character of the neighborhood.
22. The Board found that Ms. Kaiser testified that that the variance for the dwelling is the least modification necessary.
23. The Board found that no parties appeared in support of or in opposition to the Application.
24. The Board found that the Office of Planning & Zoning received seven (7) letters in support of the Application.
25. Based on the findings above and the testimony presented at the public hearing and the public record, the Board determined that the Application met the standards for granting a variance. The Property is unique since it is adjacent to the Delmarva Power & Light easement area. The situation is unique due to the surveying differences. The difficulty was not created by the Applicant. The variances are necessary to enable reasonable use of the Property. The variances will not alter the essential character of the neighborhood. The variances sought are the minimum variances necessary to afford relief.

The Board approved the variance application finding that it met the standards for granting a variance.

Decision of the Board

Upon motion duly made and seconded, the Application was approved. The Board Members voting to approve the Application were Mr. Jeff Hudson, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman. No Member voted against the Motion to Approve the 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 8, 2013