

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: KEVIN M. KERRIGAN

(Case No. 11272)

A hearing was held after due notice on September 23, 2013. The Board members present were: Mr. Dale Callaway, Mr. Jeff Hudson, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for variances from the front yard and side yard setback requirement.

Findings of Fact

The Board found that the Applicant was seeking a variance of 16.4 feet from the thirty (30) feet from the front yard setback requirement for a proposed deck and a variance of 0.8 feet from the five (5) feet side yard setback requirement for an existing shed. The Applicant has requested that the aforementioned requested variances be granted as they pertain to certain real property northeast corner of Pearl Street (a.k.a. Whitledge Street) and Phillips Road 100 feet southwest of Mercer Avenue (Road 297A) in Oak Orchard area northeast of Road 297 (Oak Orchard Road); said property being identified as Sussex County Tax Map Parcel Number 2-34-35.05-46.00. After a hearing, the Board made the following findings of fact:

1. Kevin Kerrigan and Douglas Annand were sworn in to testify on behalf of the Application.
2. The Board found that Mr. Annand testified that he is a surveyor.
3. The Board found that Mr. Annand testified that the Applicant obtained the Property in 2008 and that the existing dwelling is non-conforming structure as it pre-dates the existence of the Sussex County Zoning Code and is located in the setback areas.
4. The Board found that Mr. Annand testified that the Property is located in Oak Orchard and floods frequently.
5. The Board found that Mr. Annand testified that Applicant had the existing dwelling raised straight up to comply with flood zone regulations.
6. The Board found that Mr. Annand testified that the builder obtained a building permit but did not realize raising the dwelling created a further encroachment.
7. The Board found that Mr. Annand submitted to the Board pictures of the dwelling and an old survey of the Property.
8. The Board found that Mr. Annand testified that the Property fronts on Pearl Street.
9. The Board found that Mr. Annand testified that the proposed decks are within the same footprint as the previous porches on the Property.
10. The Board found that Mr. Annand testified that the proposed decks are needed to access the dwelling through existing doors.
11. The Board found that Mr. Annand testified that the shed has been on the lot for many years.
12. The Board found that Mr. Kerrigan testified that he inherited the Property from his father and that he always recalls the shed being on the Property.
13. The Board found that Mr. Kerrigan testified that the lot has flooded during most storms.
14. The Board found that Mr. Kerrigan testified that there is a need for stairs and decking leading to the access points of the dwelling.

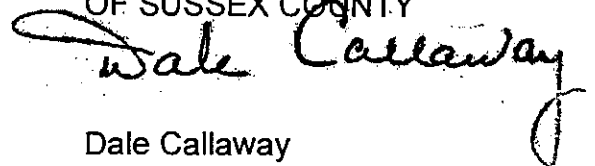
15. The Board found that Mr. Kerrigan testified that the intersection of Pearl Street and Phillips Road is not an active intersection.
16. The Board found that Mr. Kerrigan testified that the lot is small which makes it unique in size.
17. The Board found that Mr. Kerrigan testified that the Property cannot be developed in strict conformity.
18. The Board found that Mr. Kerrigan testified that the variances will enable reasonable use of the Property.
19. The Board found that Mr. Kerrigan testified that the difficulty was not created by the Applicant.
20. The Board found that Mr. Kerrigan testified that the variances will not alter the essential character of the neighborhood and that the variances will not be detrimental to the public welfare.
21. The Board found that Mr. Kerrigan testified that the variances are the minimum variances necessary to afford relief.
22. The Board found that no parties appeared in support of or in opposition to the Application.
23. 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 flooding issues and the size of the lot make the Property unique. The Property cannot be developed in strict conformity with the Sussex County Zoning Code. The difficulty was not created by the Applicant. 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. Dale Callaway, 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 November 5, 2013