

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: KEITH D. RIKER

(Case No. 11357)

A hearing was held after due notice on April 14, 2014. 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 rear yard, side yard, front yard, and corner side yard setback requirements.

Findings of Fact

The Board found that the Applicant was seeking a variance of 9.1 feet from the ten (10) feet rear yard setback requirement for an existing second-floor landing, a variance of 9.6 feet from the ten (10) feet side yard setback requirement for an existing second-floor deck, a variance of twenty-two (22) feet from the thirty (30) feet front yard setback requirement for an existing well and pump house, and a variance of 9.2 feet from the fifteen (15) feet corner side yard setback requirement for an existing second-floor deck. The Applicant has requested that the aforementioned requested variances be granted as they pertain to certain real property located southeast of Hebron Road (Road 273) and southwest of Harmon Road, a subdivision street, and 75 feet southwest of Burton Avenue in West Rehoboth Subdivision and being Lot 1 in George H. Shockley Subdivision; said property being identified as Sussex County Tax Map Parcel Number 3-34-13.19-77.00. After a hearing, the Board made the following findings of fact:

1. The Board found that the Office of Planning and Zoning received one (1) letter in support, fourteen (14) letters of no objection to the Application, and one (1) letter in opposition to the Application.
2. Keith Riker was sworn in to testify on behalf of the Application.
3. The Board found that Mr. Riker submitted exhibits to the Board to review.
4. The Board found that Mr. Riker testified that the Property is located in West Rehoboth.
5. The Board found that Mr. Riker testified that he retained Delmarva Pole Building to construct a detached pole building which would have two floors but that, due to expenses, he removed the second floor, decks, and stairs from the plans.
6. The Board found that Mr. Riker testified that his contract with Delmarva Pole Building states it is not responsible for encroachments.
7. The Board found that Mr. Riker testified that he later built the second floor, decks, and stairs himself.
8. The Board found that Mr. Riker testified that the second floor is not accessible without the exterior steps and decks and that there are no interior steps within the pole building.
9. The Board found that Mr. Riker testified about the history of the pump house on the Property.
10. The Board found that Martin Joseph Miller, Jr. was sworn in and testified in opposition to the Application.
11. The Board found that Mr. Miller testified that his family owns the property behind the Applicant's property and that he was born and raised in the neighborhood.
12. The Board found that Mr. Miller testified that an existing shed, fence and mailbox were removed from his aunt's property without her consent prior to the construction of the pole building on the Applicant's property.

13. The Board found that Mr. Miller testified that the shed has since been rebuilt in the same location and that his aunt's mailbox has been relocated further from her property.
14. The Board found that Mr. Miller testified that the Applicant is responsible for making sure that his contractor complies with the setback requirements.
15. The Board found that Mr. Miller testified that the Applicant's structures are inches from the property line and that the structures are so close to the Property line that they would prohibit fire equipment from gaining access in case of emergency.
16. The Board found that Mr. Miller testified that he is concerned about fire spreading from the Applicant's property to his aunt's property.
17. The Board found that Mr. Miller testified that the Applicant does not have the right to encroach so close to his aunt's property.
18. The Board found that Mr. Miller testified that he does not understand how the Applicant could be so negligent in making sure the structures were being built in compliance with the zoning code.
19. The Board found that Mr. Miller testified that the Applicant's property once belonged to his sister and that he is not aware of a well or pump house existing on that property at the location shown on the survey.
20. The Board found that Mr. Miller testified that he believes the Applicant placed the pump house on the Property.
21. The Board found that Mr. Miller testified that he used to pump water on the Property between the house and the pole building.
22. The Board found that Mr. Miller testified that he does not recall anything being in the location of the current pump house.
23. The Board found that Mr. Miller testified that his mother lives in the neighborhood and he visits regularly.
24. The Board found that Mr. Miller testified that he spoke to the Applicant during construction of the building about his concern for the Applicant storing lumber on his aunt's property.
25. The Board found that Mr. Miller testified that he believes a set of steps can be built between the building and the existing dwelling to gain access to the second floor storage area.
26. The Board found that Mr. Miller testified that there is sufficient room between the house and the pole building for stairs.
27. The Board found that Mr. Miller testified that he has no objection to the location of the pole building as long as the decks are removed but that he opposes the pump house, the decks, and the stairs.
28. The Board found that Mr. Miller testified that there was never a covered gazebo type structure on the front of the dwelling.
29. The Board found that Mr. Riker testified that the pump house on the Property is under the ground in a cinder block basement type room.
30. The Board found that Mr. Riker testified that he put beams around the pump house to make it look like a gazebo.
31. The Board found that Mr. Riker testified about concerns raised by Mr. Miller.
32. The Board found that two (2) parties appeared in support of the Application.
33. The Board found that one (1) party appeared in opposition to the Application.
34. At the conclusion of the public hearings, the Board voted to leave the record open for the limited purpose of allowing the Office of Planning & Zoning to research the existence of the pump house and to report back to the Board regarding its investigation and with pictures of the pump house.
35. At its meeting on May 19, 2014, the Board reviewed pictures of the Property taken by the Office of Planning & Zoning and the Board discussed the Application.
36. Based on the findings above and the testimony presented at the public hearing and the public record, the Board determined that the Application failed to meet the standards for granting a variance. The Applicant has created his own hardship. The pole building was constructed with a building permit and the permit references that the pole building was to have an open ceiling with no second floor. After the pole building was constructed the Applicant himself built, without a permit, stairs and decking to reach the second floor. The Applicant also testified that he created the gazebo-like structure over the existing below

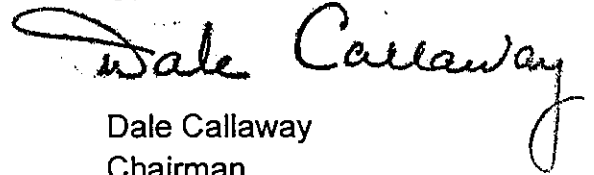
ground well. The Applicant has clearly created his own hardship. Furthermore, the Property is not unique in any way. The Property was also already developed prior to the construction of the pole building and the gazebo-like structure so the Property can be developed in strict conformity with the Sussex County Zoning Code. The pole building decking and stairs impair the uses of neighboring and adjacent properties due to its close proximity thereto. It would be nearly impossible for the Applicant to maintain or repair the decking and stairs without encroaching onto neighboring property. The variances are not necessary to enable reasonable use of the Property. The Board is not convinced that a second floor of the pole building cannot be accessed either internally or through other means which would not encroach into the setback areas.

The Board approved the variance application finding that it failed to meet the standards for granting a variance.

Decision of the Board

Upon motion duly made and seconded, the Application was denied. The Board Members voting to deny 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 Deny the Application.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY


Dale Callaway
Chairman

Date

July 8, 2014