

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

**IN RE: JAMES SHELTON and LESLIE SHELTON**

**(Case No. 11519)**

A hearing was held after due notice on February 2, 2015. The Board members present were: Mr. Dale Callaway, Mr. Jeff Hudson, Mr. John Mills, and Mr. Norman Rickard.

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 Applicants were seeking a variance of 4.9 feet from the thirty (30) feet front yard setback requirement for a proposed dwelling. This application pertains to certain real property located south of Route 54 (Lighthouse Road) and being west of Maple Lane, approximately 1,074 feet south of Cedar Road and being more specifically Lot 40 within Keen-wik Subdivision No. 5 (911 Address: 38364 Maple Lane, Selbyville, DE); said property being identified as Sussex County Tax Map Parcel Number 5-33-19.16-38.00.

1. The Board was given copies of the Application, a portion of the tax map of the area, and a survey of the Property dated November 14, 2014
2. The Board found that the Office of Planning & Zoning did not receive any correspondence regarding the Application prior to the hearing.
3. Charles Zonko was sworn in to testify about the Application and James Fuqua, Esquire, presented the case on behalf of the Applicants. Mr. Fuqua submitted exhibits to the Board to review.
4. The Board found that Mr. Fuqua stated that the Property is located in the Keen-Wik development.
5. The Board found that Mr. Fuqua stated that the lot measures approximately 50 feet wide by 110 feet deep and that the proposed dwelling measures approximately 30 feet wide by 58 feet deep. The proposed dwelling will comply with side and rear yard setback requirements.
6. The Board found that Mr. Fuqua stated that the Property is subject to setback requirements from Sussex County and Keen-wik Subdivision which are different. The Sussex County front yard setback requirement is thirty (30) feet and Keen-wik Subdivision requires a twenty-five (25) feet front yard setback requirement. Keen-wik Subdivision requires a twenty (20) feet rear yard setback and Sussex County has only a ten (10) feet rear yard setback requirement.
7. The Board found that Mr. Fuqua stated that there are other dwellings in the subdivision only twenty-five (25) feet from the front yard property line.
8. The Board found that Mr. Fuqua stated that there have been numerous variances granted in the subdivision.
9. The Board found that Mr. Fuqua stated that Keen-wik has evolved to a year-round community.
10. The Board found that Mr. Fuqua stated that the situation is unique due to the small lot and the different setback requirements required by the restrictive covenants.
11. The Board found that Mr. Fuqua stated that the variance is necessary enable reasonable use of the Property as it will enable the Applicants to build a house that is consistent with the neighborhood.

12. The Board found that Mr. Fuqua stated that the proposed dwelling will be an upgrade and that the Keen-wik building committee approves of the proposed dwelling.
13. The Board found that Mr. Fuqua stated that the difficulty was not created by the Applicants.
14. The Board found that Mr. Fuqua stated that the variance will not alter the essential character of the neighborhood and that the dwelling will be similar to other homes in the neighborhood; including two (2) homes nearby.
15. The Board found that Mr. Fuqua stated that the variance is the minimum variance to afford relief.
16. The Board found that Mr. Fuqua stated that Mr. Zonko is a contractor for the Applicants.
17. The Board found that Mr. Zonko, under oath, confirmed the statements made by Mr. Fuqua.
18. Elma McCabe, Ronald McCabe and Troy McCabe were sworn in and testified in opposition to the Application.
19. The Board found that Ronald McCabe testified that he lives next door to the Applicant and he is concerned that the proposed dwelling will block his view of the bay.
20. The Board found that Ronald McCabe testified that all the dwellings on the street are lined up approximately the same distance from the front property line.
21. The Board found that Ms. McCabe testified that her lot is a double lot adjacent to the Property.
22. The Board found that Ronald McCabe testified that he would not object to the proposed dwelling if the dwelling was the lagoon side of the Property.
23. The Board found that Ronald McCabe testified that he believes his dwelling sits twenty-five (25) feet from the front property line but he is not sure. He believes that his dwelling is in line with other dwellings on the street.
24. The Board found that Ronald McCabe testified that he does not object to the proposed dwelling if it is not farther into the front yard than his house and if the proposed dwelling does not block his view of the bay. Mr. McCabe's view of the bay is from his front yard.
25. The Board found that Mr. Fuqua stated that the Applicants did not have the surveyor perform an average of the front yard setbacks for the area but the Applicants could provide a survey to show the average setback of the dwellings on the street.
26. The Board found that Mr. McCabe testified that he can submit a survey of his property to the Board prior to the March 2, 2015 meeting.
27. The Board found that no parties appeared in support of the Application.
28. The Board found that three (3) parties appeared in opposition to the Application.
29. The Board voted to leave the record open for the specific purpose of allowing a survey to be submitted by the Applicant showing the average front yard setback of dwellings within three hundred (300) feet of the Property on the same side of Maple Lane and for the opposition to submit a survey showing the setback on Lot 41. All surveys were required to be submitted by February 23, 2015.
30. On March 2, 2015, the Board held a hearing on this matter and found that the Applicant submitted a letter with pictures of the Property and a survey dated February 12, 2015 which showed the average front yard setbacks in the area. Of the four neighboring properties shown on the survey, only one property was less than thirty (30) feet from the front yard setback line. The neighboring Lot 39 was 26.4 feet from the front yard setback line.
31. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, the Board determined that the application met the standards for granting a variance. The Board approved the application

for a variance of 3.6 feet from the front yard setback line rather than a variance of 4.9 feet as requested by the Applicants. The findings below further support the Board's decision to approve the Application.

- a. The Property is unique due to its unusual size and location. The Property is narrow and is located adjacent to a lagoon. A portion of the rear yard is located in the lagoon and eliminates some usable space in the rear yard. The unique characteristics of this Property limit the buildable area available to the Applicants and have created an exceptional practical difficulty for the Applicant. The Applicants are also restricted in where they can build on the Property due to setback requirements set forth in their restrictive covenants which differ from the Sussex County setback requirements.
- b. Due to the unique size and location of the lot, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Applicant seeks to construct a dwelling of a reasonable size but is unable to do so without violating the Sussex County Zoning Code. The Board is convinced that a variance is necessary to enable the reasonable use of the Property as the variance will allow a reasonably sized dwelling to be placed on the Property.
- c. The exceptional practical difficulty was not created by the Applicant. The Applicant did not create the unusual size of the Property, its proximity to the lagoon, or the restrictive covenants. The limited building envelope of the Property has created the exceptional practical difficulty. The unique characteristics of the Property are clear when reviewing the survey.
- d. The variance of 3.6 feet from the front yard setback 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 was not convinced by testimony of neighbors to the contrary. The Board, however, was concerned that placing the proposed dwelling 25.1 feet from the front property line would be out of character for the neighborhood. The survey dated February 12, 2015, shows that 3 of the 4 neighboring properties are located more than 30 feet from the front property line. The Board found that placing the dwelling on the Property as proposed by the Applicant would alter the essential character of the neighborhood. Since the dwelling on Lot 39 is 26.4 feet from the front property line, the Board determined that a variance of 3.6 feet from the front yard setback line would not alter the essential character of the neighborhood as this variance would allow those two houses to line up.
- e. The Board is convinced that a variance of 3.6 feet is the minimum variance necessary to afford relief to the Applicants and represents the least modification of the regulation at issue. This variance will provide the Applicants with a small expansion of the building envelope and will allow the Applicants enough space to build a reasonably sized dwelling within that building envelope. The Board was not convinced that a variance of 4.9 feet was the minimum variance necessary to afford relief to the Applicants.

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, Mr. Jeff Hudson, Mr. John Mills, and Mr. Norman Rickard. No Board Members voted against the Motion to approve the variance application. Mr. Brent Workman did not participate in the discussion or vote of this 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 April 21, 2015