

**BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY  
IN RE: JEFFREY N. HAGER & SUSAN L. HAGER**

**(Case No. 11553)**

A hearing was held after due notice on April 20, 2015. The Board members present were: Mr. Dale Callaway, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman.

**Nature of the Proceedings**

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

**Findings of Fact**

The Board found that the Applicants were seeking variances of 4.8 feet from the ten (10) feet side yard setback requirement for both sides of the Property for a proposed dwelling. This application pertains to certain real property located south of Route 54 (Lighthouse Road) and being west of Keen-wik Road, approximately 979 feet south of Hickory Land and being more specifically Lot 4 Subdivision No. 1 within Keen-wik Subdivision (911 Address: None Available); said property being identified as Sussex County Tax Map Parcel Number 5-33-20.13-38.01.

1. The Board was given copies of the Application, a portion of the tax map of the area, a site plan of the Property dated January 16, 2015, and a letter from Edward Brady, Chairman of the Keen-wik Building Committee.
2. The Board found that the Office of Planning & Zoning did not receive any correspondence regarding the Application.
3. Timothy Tribbitt and Jeffrey Hager were sworn in to testify about the Application. Raymond Tomasetti, Esquire, presented the case on behalf of the Applicants and submitted exhibits to the Board, which include pictures of the neighborhood and a survey of the Property dated February 1, 2001.
4. The Board found that Mr. Tomasetti stated that the lot measures 50 feet wide which is one of the smaller lots in the Keen-wik development.
5. The Board found that Mr. Tomasetti stated that the exceptional practical difficulty was not created by the Applicants. The Property was created by a prior owner when it was subdivided out of a larger parcel by a prior owner as shown on the 2001 survey.
6. The Board found that Mr. Tomasetti stated that the Applicants need the variances to place the dwelling on the Property and that the proposed dwelling had to be designed to accommodate an elevator which is needed to due to health issues.
7. The Board found that Mr. Tomasetti stated that the community's setback requirements are different than the Sussex County setback requirements.
8. The Board found that Mr. Tomasetti stated that the variances will not alter the essential character of the neighborhood.
9. The Board found that Mr. Tomasetti stated that the Applicants could not place the house on the Property with an elevator without a variance.
10. The Board found that Mr. Tomasetti stated that the Homeowners Association approved the proposed dwelling.
11. The Board found that Mr. Tomasetti stated that the variances requested are the minimum variances necessary to afford relief.
12. The Board found that Mr. Tribbitt testified that the Applicants have redesigned the plans for the home.
13. The Board found that Mr. Tribbitt testified that the proposed elevator will be larger than most elevators to accommodate a wheelchair.

14. The Board found that Mr. Tribbitt testified that the elevator will be accessed from the proposed garage and will be used to access the two levels of living space of the proposed dwelling above the ground level. The elevator will be level with the garage floor.
15. The Board found that Mr. Tribbitt testified that the Property is in a flood zone and the elevator mechanics will meet the required flood zone requirements.
16. The Board found that Mr. Hager, under oath, confirmed the statements made by Mr. Tomasetti.
17. The Board found that Mr. Hager testified that the interior design of the dwelling is wider rather than longer to accommodate wheelchair accessibility and maneuverability within the dwelling.
18. The Board found that no parties appeared in support of or in opposition to 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 its small size. The Property is narrow and is located adjacent to a lagoon. The unique characteristics of this Property limit the buildable area available to the Applicants and have created an exceptional practical difficulty for the Applicants. The Applicants are also restricted in where they can build on the Property due to setback requirements set forth in their community which differ from the Sussex County setback requirements. The uniqueness of the Property is evident when reviewing the 2015 site plan submitted by the Applicants.
  - b. Due to the uniqueness of the lot, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Applicants seek to construct a dwelling of a reasonable size but are unable to do so without violating the Sussex County Zoning Code. The Board is convinced that the variances are necessary to enable the reasonable use of the Property as the variances will allow a reasonably sized dwelling with an elevator to be placed on the Property. The Board is convinced that the size, shape, and location of the dwelling and elevator are reasonable, which is confirmed when reviewing the site plan.
  - c. The Board also finds that the proposed dwelling needs to be wider to accommodate the Applicants' need for wheelchair accessibility and maneuverability inside the dwelling. The approval of these variances represents a reasonable accommodation to the Applicants.
  - d. The exceptional practical difficulty was not created by the Applicants. The Applicants did not create the unusual size of the Property. Rather, the lot was created by a prior owner. The Applicants also did not create the community's restrictions which further limit the buildable area of the lot. The limited building envelope of the Property and the need for an elevator and wider home due to the Applicants' disability have created the exceptional practical difficulty. The unique characteristics of the Property are clear when reviewing the survey and site plan.
  - e. The variances 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 proposed dwelling is consistent with other homes in Keen-wik as photographs of neighboring properties submitted by the Applicants indicate that similar sized homes are located in the neighborhood. The Applicants have demonstrated that they have submitted their plans to the Keen-wik Home Owners Association and that

the Association has approved of the plans. No evidence was presented which would indicate that the variances would somehow alter the essential character of the neighborhood or be detrimental to the public welfare.

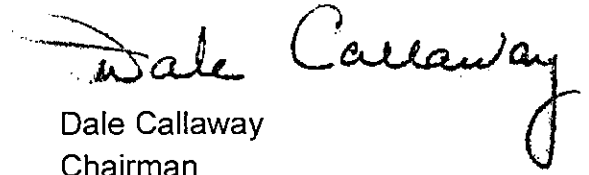
- f. The variances sought are the minimum variances necessary to afford relief and the variances requested represent the least modifications possible of the regulations at issue. The Applicants have demonstrated that the variances sought will allow the proposed dwelling to be built in the proposed location. The Applicants have redesigned their plans to minimize the need for the requested variances.

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. John Mills, Mr. Norman Rickard, and Mr. Brent Workman. No Board Members voted against the Motion to approve the variance application. Mr. Jeff Hudson did not participate in the vote or discussion 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 June 9, 2015