

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY
IN RE: #3 BAYBERRY PROPERTIES, LLC / CHARLES F. ZEILER
(Case No. 11573)

A hearing was held after due notice on May 18, 2015. The Board members present were: Mr. Dale Callaway, Mr. John Mills, Mr. Jeff Hudson, 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 requirements.

Findings of Fact

The Board found that the Applicants are requesting a variance of 4.7 feet from the ten (10) feet side yard setback requirement for a proposed dwelling, a variance of 4.7 feet from the ten (10) feet side yard setback requirement for proposed steps and landing, and a variance of 4.7 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 Bayberry Lane, approximately 1,100 feet south of Cedar Road and being more specifically Lot 55 and part of Lot 56 Block H within Keen-wik Subdivision (911 Address: None Available); said property being identified as Sussex County Tax Map Parcel Number 5-33-20.13-47.00. After a hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a survey dated October 29, 2014, and a portion of the tax map of the area.
2. The Board found that the Office of Planning and Zoning received no letters in support of the Application and one (1) letter in opposition of the Application.
3. Charles Zeiler and Sandra Zeiler were sworn in and testified regarding the Application and submitted a drawing of the proposed dwelling to the Board.
4. The Board found that Mrs. Zeiler testified that the Property is located in Keen-wik by the Bay which is a subdivision created in the 1960s.
5. The Board found that Mrs. Zeiler testified that most lots in the community measure 50 feet by 100 feet and their lot measures 75 feet by 100 feet.
6. The Board found that Mrs. Zeiler testified that although their lot is slightly larger than others it is still a shallow and narrow lot. A portion of the Property is in the canal.
7. The Board found that Mrs. Zeiler testified that the Property could otherwise be developed with a smaller home but they do not want to build a smaller home.
8. The Board found that Mrs. Zeiler testified that the character of the lot has not created an exceptional practical difficulty.
9. The Board found that Mrs. Zeiler testified that the variances will not alter the essential character of the neighborhood. Smaller homes in the neighborhood have been replaced with larger homes.
10. The Board found that Mrs. Zeiler testified that the proposed location of the dwelling meets the setback requirements of the Homeowners Association and the Homeowners Association has approved the proposed dwelling.
11. The Board found that Mrs. Zeiler testified that the variances requested are the minimum variances to afford relief.
12. The Board found that Mrs. Zeiler testified that the variances are necessary to allow them to build a dwelling large enough to accommodate their family.
13. The Board found that Mrs. Zeiler testified that the variances will allow for green space on the side and to the rear of the Property.

14. The Board found that Mrs. Zeiler testified that the proposed dwelling is a two (2) story structure with a crow's nest.
15. The Board found that Mr. Zeiler testified that without the variances they will not build the dwelling.
16. The Board found that Mrs. Zeiler testified that the dwelling was designed by an architect who was aware of the setback requirements.
17. The Board found that Mrs. Zeiler testified that they believe the request is reasonable.
18. The Board found that Mrs. Zeiler testified that she could have told the architect to design within the Sussex County requirements.
19. The Board found that Mrs. Zeiler testified that she is surprised at the opposition.
20. The Board found that three (3) parties appeared in support of the Application.
21. The Board found that no parties appeared in opposition to the Application.
22. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, the Board denied the application for the variances. The findings below further support the Board's decision to deny the Application.
 - a. The Board was not convinced that the Property was unique and that an exceptional practical difficulty exists. The Applicants intend to build a larger house on the Property in areas which would exceed the building envelope set forth in the Sussex County Zoning Code. Mrs. Zeiler testified that the Property was actually larger than other lots in the Keen-wik subdivision. Despite the larger size of the Property, however, the Applicants seek additional space upon which to build the house. The dwelling would encroach into both the front and side yard setback areas. The larger size of the lot should afford the Applicants additional space upon which to construct a conforming dwelling and thereby negate the need for a variance. The Board is not convinced that there is some uniqueness to the Property which has created an exceptional practical difficulty for the Applicants.
 - b. The Board was also not convinced that the Property could not be developed in strict conformity with the Sussex County Zoning Code or that the variances are necessary to enable reasonable use of the Property. Mrs. Zeiler admitted that a smaller home could be placed on the Property but they did not want a smaller home. The Applicants clearly can comply with the Sussex County Zoning Code but do not want to comply. The Board finds that the Applicants could reasonably use the Property by building a smaller home or redesigning the proposed dwelling to fit within the building envelope.
 - c. The Board is convinced that any exceptional practical difficulty which may exist has been created by the Applicants. The Applicants have designed a house which does not comply with the Sussex County Zoning Code and have admitted that they could build a house to comply with the Code. The survey attached the application clearly shows that there is additional space to the side and rear of the proposed dwelling within the building envelope which is unused by the proposed dwelling. Any difficulty which may exist is self-created by the Applicants.
 - d. The variances sought are not the minimum variances necessary to afford relief and the variances requested do not represent the least modifications possible of the regulations at issue. Since the Applicants could build a home in compliance with the Sussex County Zoning Code, the variances requested are not necessary to afford relief. Even if the Applicants were to successfully argue that the proposed dwelling is somehow necessary to afford relief, the location of the proposed dwelling could be moved to

minimize the front and side yard variances requested as there is additional space within the building envelope to the south and west of the location of the proposed dwelling as shown on the survey attached to the application. The Board is not convinced that the variances requested are the minimum variances necessary to afford relief.

The Board denied for a variance application finding that it failed to meet the necessary standards for approval.

Decision of the Board

Upon motion duly made and seconded, the variance application was denied. The Board Members in favor were Mr. Dale Callaway, Mr. Jeff Hudson, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman. No Board Members voted against the Motion to deny the variance application.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY


Dale Callaway
Chairman

Date July 7, 2015