

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: DAWN ANDERSON

(Case No. 11630)

A hearing was held after due notice on September 14, 2015. The Board members present were: Mr. Dale Callaway, Mr. Jeff Hudson, and Mr. Norman Rickard.

Nature of the Proceedings

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

Findings of Fact

The Board found that the Applicant is seeking a variance of five (5) feet from the thirty (30) feet front yard setback requirement for a proposed dwelling, a variance of five (5) feet from the ten (10) feet side yard setback requirement for both sides for a proposed dwelling, and a variance of four (4) feet from the five (5) feet front yard setback requirement for a proposed set of steps. This application pertains to certain real property located on the west side of Bayberry Lane approximately 1,325 feet south of Cedar Road (911 Address: None Available); said property being identified as Sussex County Tax Map Parcel Number 5-33-20.13-63.00.

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 March 29, 2015.
2. The Board found that the Office of Planning & Zoning received had not received any correspondence in support of the Application and received one (1) letter in opposition to the Application.
3. Dawn Anderson and Michael Cummings were sworn in to testify about the Application. Mr. Cummings submitted pictures, letters of support and a copy of the recorded covenants to the Board to review.
4. The Board found that Mr. Cummings testified that the proposed dwelling meets Keenwik Subdivision setback requirements as set forth in the deed restrictions.
5. The Board found that Mr. Cummings testified that the Property is short in depth and is limited in the rear yard due to the neighborhood's setback requirements. The lot is unique in size as it consists of only 4,400 square feet.
6. The Board found that Mr. Cummings testified that other houses in the neighborhood are similarly situated.
7. The Board found that Mr. Cummings testified that the majority of dwellings in the development have a five (5) feet side yard setback and a twenty-five (25) feet front yard setback.
8. The Board found that Mr. Cummings testified that the variances are necessary to enable reasonable use of the Property.
9. The Board found that Mr. Cummings testified that the exceptional practical difficulty was not created by the Applicant.
10. The Board found that Mr. Cummings testified that the variances will not alter the essential character of the neighborhood as the dwelling will be constructed pursuant to the allowable setbacks within the community's deed restrictions. The Applicant does not seek to exceed the setback requirements set forth in the deed restrictions.
11. The Board found that Mr. Cummings testified that the variances are the minimum variances to afford relief.
12. The Board found that the proposed two-story dwelling will be on pilings in order to comply with the flood zone requirements and the dwelling will be 2,200 square feet in size.

13. The Board found that Mr. Cummings testified that the HVAC will be placed at the rear of the Property. There will be no stairs on the side or rear of the Property.
14. The Board found that Mr. Cummings testified that the rear yard has flooded in the past.
15. The Board found that Mr. Cummings testified that the building envelope significantly limits the ability to construct a reasonably sized home on the lot
16. The Board found that two (2) parties appeared in support of the Application.
17. The Board found that no parties appeared in opposition to the Application.
18. 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 findings below further support the Board's decision to approve the Application.
 - a. The Property is unique due to its unique size. The Property is quite small and is located adjacent to a lagoon as evidenced by the survey. The Property is also unique because it is subject to deed restrictions which have different setback requirements than the requirements set forth in the Sussex County Zoning Code. The unique characteristics of this Property limit the buildable area available to the Applicant and have created an exceptional practical difficulty for the Applicant who seeks to construct a reasonably sized dwelling on the lot.
 - b. Due to the uniqueness of the lot, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property has a unique size and the buildable area thereof is limited due to its size and the deed restrictions. The Applicant seeks to build a dwelling of reasonable size but is 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 to be constructed on the Property. The Board is convinced that the size, shape, and location of this dwelling are reasonable, which is confirmed when reviewing the survey provided by the Applicant.
 - c. The exceptional practical difficulty was not created by the Applicant. The Applicant did not create the unusual size of the Property or the deed restrictions. The small lot size has resulted in a limited building envelope on the Property and the small building envelope was further compromised by the deed restrictions thereby resulting in an exceptional practical difficulty for the Applicant. The effects of the small building envelope were exacerbated by the fact that portions of the rear yard are subject to flooding at times. The unique characteristics of the Property are clear when reviewing the survey. The Board is convinced that the exceptional practical difficulty was not created by the Applicant but was created the lot's unique characteristics and by the deed restrictions in place.
 - d. 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 dwelling will have no effect on the character of the neighborhood. The dwelling will be consistent with other similarly situated homes in the neighborhood. The Board was not persuaded by the letter from the opposition that the dwelling would somehow alter the essential character of the neighborhood or be detrimental to the public welfare.
 - e. 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 Applicant has demonstrated that

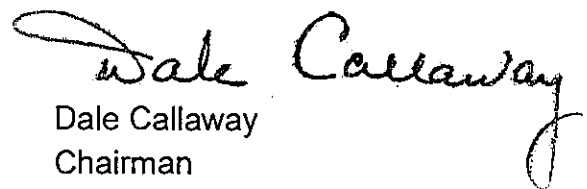
the variances sought will allow the Applicant to construct a reasonably sized dwelling on the Property.

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, and Mr. Norman Rickard. No Board Member voted against the Motion to Approve the Application. Mr. John Mills and Mr. Brent Workman were not present and 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 October 20, 2015.