

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: JUDITH DAYOFF & FREDERICK DAYOFF

(Case No. 11662)

A hearing was held after due notice on November 2, 2015. The Board members present were: Mr. Dale Callaway, Mr. Jeff Hudson, Mr. John Mills, and Mr. Brent Workman, 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 are seeking a variance of five (5) feet from the thirty (30) feet front yard setback requirement for a proposed attached garage and a proposed front porch. This application pertains to certain real property located on the southeast side of Roy Creek Lane approximately 149 feet east of Cedar Road (911 Address: 38186 Roy Creek Lane, Selbyville); said property being identified as Sussex County Tax Map Parcel Number 5-33-20.09-168.00.

1. The Board was given copies of the Application, a portion of the tax map of the area, a letter from Edward Brady, Chairman of the Keenwik Building Committee, and a survey of the Property dated July 23, 2015.
2. The Board found that the Office of Planning & Zoning received one (1) letter of support to the Application and had not received any correspondence in opposition to the Application.
3. Frederick Dayoff and James Parker were sworn in to testify about the Application.
4. The Board found that Mr. Dayoff testified that the Applicants intend to build the garage and porch for safety reasons. The Applicants are aging and the proposed attached garage is needed to provide shelter and safety when exiting and entering the existing dwelling.
5. The Board found that Mr. Dayoff testified that he has difficulty walking and that his wife fell on ice last year and broke her hip.
6. The Board found that Mr. Parker testified that the Property is unique because it is small. The Property consists of only 10,021 square feet.
7. The Board found that Mr. Parker testified that the dwelling was built in 1984 as a vacation home. The Applicants are now full time residents.
8. The Board found that Mr. Parker testified that Keenwik Subdivision has a front yard setback requirement of twenty-five (25) feet which is less than the Sussex County front yard setback requirement. The Keenwik Subdivision Homeowners Association supports the Application.
9. The Board found that Mr. Parker testified that the proposed attached, one car garage will measure 19 feet by 24 feet.
10. The Board found that Mr. Parker testified that the proposed garage and porch will provide easier access to the existing dwelling and the proposed garage was designed to accommodate a future handicap ramp.
11. The Board found that Mr. Parker testified that an existing bedroom is being eliminated in order to make room for the proposed garage and for access thereto.
12. The Board found that no parties appeared in support of or in opposition to the Application.
13. 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 unique size. The Property is quite small as evidenced by the survey. The unique characteristics of this Property limit the buildable area available to the Applicants and have created an exceptional practical difficulty for the Applicants who seek to construct a garage and porch on the lot. The situation is also unique because the Applicants suffer from mobility issues and need safer access to the dwelling; which access can be provided by the proposed garage and porch.
- 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. The Applicants seek to construct a garage and porch of reasonable size but are unable to do so without violating the Sussex County Zoning Code even though the proposed structures will comply with the setback requirements set forth by the Keenwik Homeowners Association. 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 garage and porch to be constructed on the Property. The Board is convinced that the size, shape, and location of this garage and porch are reasonable, which is confirmed when reviewing the survey provided by the Applicants.
- c. The exceptional practical difficulty was not created by the Applicants. The Applicants did not create the unusual size of the Property. The unique lot size has resulted in a limited building envelope on the Property and the small building envelope has created the exceptional practical difficulty. The unique characteristics of the Property are clear when reviewing the survey. The effects of the small building envelope were exacerbated by the fact that the Applicants suffer from health problems and need a garage to safely enter and exit the dwelling in times of inclement weather. They are unable to place a garage on the Property in strict conformity with the Sussex County Zoning Code. The Board is convinced that the exceptional practical difficulty was not created by the Applicants but was created the lot's unique characteristics and the health problems suffered by the Applicants which necessitate a protected area where they can safely exit and enter the home.
- d. The variance 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 garage and porch will have no effect on the character of the neighborhood. The structures will comply with the setback requirements set forth by the Keenwik Homeowners Association and the Association and a neighbor support the Application. Furthermore, no evidence was presented which would indicate that the variance would somehow alter the essential character of the neighborhood or be detrimental to the public welfare.
- e. The variance sought is the minimum variance necessary to afford relief and the variance requested represent the least modification possible of the regulation at issue. The Applicants have demonstrated that the variance sought will allow the Applicants to construct a reasonably sized garage and porch on the Property. The Applicants have also demonstrated that they have minimized the size of the variance by

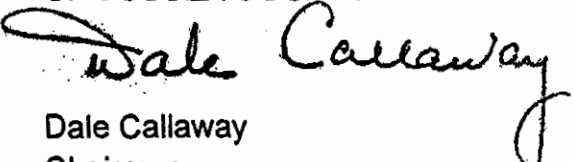
removing an existing bedroom to accommodate for the garage and by configuring the garage so as to allow for a future handicap ramp inside the garage.

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, Mr. Norman Rickard, and Mr. Brent Workman. No Board Member voted against the Motion to approve the variance 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 December 15, 2015