

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: JAMES G. MILLER

(Case No. 11666)

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 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 ten (10) feet side yard setback requirement for a HVAC system, a variance of 1.33 feet from the ten (10) feet side yard setback requirement for a proposed dwelling, and a variance of 4.23 feet from the thirty (30) feet front yard setback requirement for a proposed dwelling. This application pertains to certain real property located on the southeast side of Maple Lane approximately 0.25 miles south of Cedar Road (911 Address: None Available); said property being identified as Sussex County Tax Map Parcel Number 5-33-20.13-2.00.

1. The Board was given copies of the Application, a portion of the tax map of the area, a letter from Edward Brady of the Keenwik Building Committee, and a survey of the Property dated August 5, 2015.
2. The Board found that the Office of Planning & Zoning received one (1) letter in support of the Application, one (1) letter of approval from the Homeowners Association and no correspondence in opposition to the Application.
3. James G. Miller and James Parker were sworn in to testify about the Application.
4. The Board found that Mr. Miller testified that the shape of the Property is unique.
5. The Board found that Mr. Miller testified the first design of the dwelling was not acceptable to the Keenwik Homeowners Association. The new design is ten (10) feet smaller than the first design.
6. The Board found that Mr. Miller testified that the paved edge of Maple Lane is fifteen (15) feet from the front property line. The proposed dwelling will be forty (40) feet from the edge of Maple Lane.
7. The Board found that Mr. Miller testified that there are other three story dwellings in the neighborhood.
8. The Board found that Mr. Miller testified that the community requires the larger rear yard setback to protect the views of the lagoon.
9. The Board found that Mr. Miller testified that the HVAC units throughout the development are five (5) feet from the side property lines.
10. The Board found that Mr. Parker testified that he is the builder for the Applicant.
11. The Board found that Mr. Parker testified that the lot is located in the Keenwik community and that the Property has a unique size.
12. The Board found that Mr. Parker testified that Keenwik requires a twenty (20) feet setback from the rear yard so the dwelling does not block the view of the lagoon.
13. The Board found that Mr. Parker testified that Keenwik has a twenty-five (25) feet front yard setback requirement and other dwellings in the area are similarly placed on their properties.
14. The Board found that Mr. Parker testified that the homeowners association supports the Application.

15. The Board found that Mr. Parker testified that the proposed three (3) story dwelling is approximately 3,512 square feet in size and will be on a block foundation which is consistent with other homes on Maple Lane.
16. The Board found that Mr. Parker testified that the difficulty was not created by the Applicant.
17. The Board found that Mr. Parker testified that the variances will not alter the character of the neighborhood and that the neighbors have no objection to the Application.
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 unique size. The Property is quite small and is located adjacent to a lagoon as evidenced by the survey. The Property also has a unique shape as the front yard is much narrower than the rear yard. The Property is also subject to the Keenwik setback requirements which are different from the Sussex County setback requirements. The unique characteristics of this Property and the Keenwik setback requirements limit the buildable area available to the Applicant and have created an exceptional practical difficulty for the Applicant who seeks to construct a dwelling with an HVAC system 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 shape and the buildable area thereof is limited due to its size and shape. The Applicant seeks to construct a dwelling with an HVAC system 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 with HVAC system to be constructed on the Property. The Board is convinced that the size, shape, and location of this dwelling and HVAC system 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 or shape of the Property nor did the Applicant create the Keenwik setback requirements. The unique lot size and shape has resulted in a limited building envelope on the Property and the small building envelope has created the exceptional practical difficulty. The effects of the small building envelope were exacerbated by the Keenwik setback requirements which limit building in the rear yard. 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 the Keenwik setback requirements.
 - 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 with HVAC system will have no effect on the character of the neighborhood. The Applicant submitted his construction plans to the Keenwik Building Committee and has received approval to construct the dwelling and HVAC system as proposed.

Furthermore, the un rebutted testimony confirms that the proposed dwelling is similar to other dwellings in the neighborhood and that other dwellings are located 25 from the front setback requirement. The front yard setback encroachment is also unlikely to be noticed because the edge of the paving of Maple Drive ends 15 feet from the Applicant's front property line. Meanwhile, the un rebutted testimony confirms that that the HVAC system will be placed in a manner consistent with the placement of such systems on other properties nearby. 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.

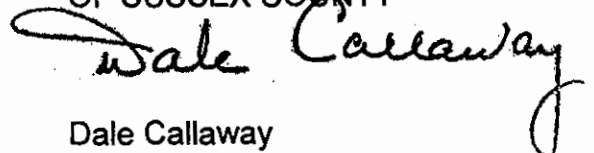
- e. The variances sought are the minimum variances necessary to afford relief and the variances requested represent the least modifications possible of the regulations at issue. The Applicant has demonstrated that the variances sought will allow the Applicant to construct a reasonably sized dwelling with HVAC system on the Property. The proposed dwelling is smaller than one previously proposed to the homeowners association and the Board is convinced that the Applicant has taken steps to minimize the need for the variance while also trying to comply with the standards of his neighborhood.

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