

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: JOHN GRIFFIN & ROBIN GRIFFIN

(Case No. 11669)

A hearing was held after due notice on November 16, 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 side yard and rear yard setback requirements.

Findings of Fact

The Board found that the Applicants are seeking a variance of 0.3 feet from the ten (10) feet side yard requirement, a variance of 1.5 feet from the ten (10) feet side yard setback requirement for a proposed dwelling, and a variance of 8.8 feet from the twenty (20) feet rear yard setback requirement for a deck. This application pertains to certain real property located on the northwest side of Elmwood Avenue West approximately 766 feet south of Woodland Circle (911 Address: 23576 Elmwood Avenue West, Lewes); said property being identified as Sussex County Tax Map Parcel Number 2-34-17.08-220.00.

1. The Board was given copies of the Application, a portion of the tax map of the area, a survey of the Property dated June 8, 2007, assessment records, a copy of an application and findings of fact for Case No. 3639, building plans for the proposed dwelling, a photograph, and a letter from the Angola by the Bay Property Owners Association.
2. The Board found that the Office of Planning & Zoning received one (1) letter in opposition to the Application and had not received any correspondence in support of the Application.
3. The Board found that John Griffin, Robin Griffin, and Jay Michael Yoder were sworn in to testify about the Application.
4. The Board found that Mr. Griffin testified that the Applicants purchased the Property in 2007.
5. The Board found that Mr. Griffin testified that the existing dwelling must be torn down due to its age and deterioration. Neighbors have encouraged him to tear down the existing dwelling.
6. The Board found that Mr. Griffin testified that the proposed two (2) story, stick-built dwelling will be within the existing footprint of the dwelling.
7. The Board found that Mr. Griffin testified that the existing dwelling had been approved for prior variances. The existing dwelling was built in the 1960s or the 1970s and there is no foundation thereto.
8. The Board found that Mr. Griffin testified that the lot is uniquely shaped as it is keystone-shaped with the narrowest portion being located near the street. The shape of the Property leaves a small building envelope.
9. The Board found that Mr. Griffin testified that the Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code.
10. The Board found that Mr. Griffin testified that the variances requested do not alter the character of the neighborhood. Rather, the dwelling will improve the neighborhood.
11. The Board found that Mr. Griffin testified that the variances are the minimum variances to afford relief.

12. The Board found that Mr. Griffin testified that the Property is adjacent to a common area in the subdivision.
13. The Board found that Mr. Griffin testified that there are no additional encroachments caused by the proposed dwelling except that there is an additional 0.3 feet variance on the side yard for a proposed garage. The Applicants have worked with an architect to minimize the need for the variance.
14. The Board found that Mr. Yoder testified that a structural engineer determined the existing dwelling was not safe to rebuild.
15. The Board found that Mr. Yoder testified that the proposed dwelling is similar to other dwellings in the area.
16. The Board found that Mr. Yoder testified that the Applicants plan to retire and live on the Property full time and that the dwelling will be designed for first floor living.
17. The Board found that Donna Kelly was sworn in and testified in support of the Application.
18. The Board found that Ms. Kelly testified that her parents live nearby and that she feels the proposed dwelling will be a huge improvement to the area.
19. The Board found that one (1) party appeared in support of the Application.
20. The Board found that no parties appeared in opposition to the Application.
21. 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 shape and size, which is apparent when reviewing the survey. The Property is particularly narrow near the front of the lot and this narrowness limits the building envelope available on the Property. The Property's unique characteristics have created an exceptional practical difficulty for the Applicants who seek to construct a 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 shape and size and the buildable area thereof is limited due to its shape and size. The Applicants seek to build a reasonably sized dwelling on the same footprint as the existing dwelling (with one very minor exception) but are unable to do so without violating the Sussex County Zoning Code. The existing dwelling has deteriorated and needs to be removed from the Property. The Board is convinced that the variances are necessary to enable the reasonable use of the Property as the variances will allow the 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 Applicants. The Applicants did not create the unusual shape and size of the Property nor did the Applicants construct the prior dwelling on the lot. The odd shape and size of the Property have led to a smaller building envelope for the Applicants and this unusually shaped building envelope has created an exceptional practical difficulty for the Applicants. The difficulty created by the small building envelope is further exacerbated by the fact that the existing dwelling (which encroaches into the setback areas) has deteriorated and needs to be removed and replaced.
 - 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 neighborhood is a residential area and the prior dwelling has been on the lot for many years in largely the same footprint as the proposed new dwelling. The Board finds compelling the testimony of a neighbor who supports the proposal as well as the letter from the homeowners association which also supports the Application. Furthermore, no substantial 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 represents the least modifications possible of the regulations at issue. The Applicants have demonstrated that the variances sought will allow the Applicants to construct the dwelling on the Property. The Applicants have worked with an architect to minimize the need for the variances while also affording them an opportunity to design a house with first-floor living. Since the Applicants intend to retire at the Property, the first-floor living design is important to them.

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 Members 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 January 5, 2016