

**BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY**

**IN RE: CHARLES H. HAYES, JR.**

**(Case No. 11718)**

A hearing was held after due notice on February 15, 2016. 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 Applicant is seeking a variance of five (5) feet from the ten (10) feet side yard setback requirement on the north side for a proposed dwelling and a variance of five (5) feet from the thirty (30) feet front yard setback requirement for a proposed dwelling. This application pertains to certain real property is located on the east side of Bayberry Lane approximately 434 feet south of Cedar Road. (911 Address: None Available); said property being identified as Sussex County Tax Map Parcel Number 5-33-20.09-108.00.

1. The Board was given copies of the Application, a letter from the Keen-wik Building Committee, and a survey of the Property dated October 22, 2015.
2. The Board found that the Office of Planning & Zoning received one (1) letter from the Homeowners Association in support of the Application and two (2) letters in opposition to the Application.
3. Charles Hayes, Jr. was sworn in to testify about the Application. Mr. Hayes submitted pictures and construction plans of the proposed dwelling.
4. The Board found that Mr. Hayes testified that he is a retired builder who builds one or two houses a year.
5. The Board found that Mr. Hayes testified that the Property is unique because it measures 50 feet wide by 100 feet deep which is narrow.
6. The Board found that Mr. Hayes testified that the proposed dwelling will meet the Homeowners Association setback requirements and will be 2,400 square feet in size.
7. The Board found that Mr. Hayes testified that the proposed dwelling is reasonable and comparable to other dwellings in the area.
8. The Board found that Mr. Hayes testified that the exceptional practical difficulty was not created by him.
9. The Board found that Mr. Hayes testified that the variances will not alter the character of the neighborhood and the neighboring lots have similar variance approvals.
10. The Board found that Mr. Hayes testified that it would unreasonable to build a house which complies with the Sussex County Zoning Code.
11. The Board found that Mr. Hayes testified that the proposed dwelling will measure 28.3 feet wide by 48 feet deep. He admitted that he has built a 24 feet wide dwelling on a forty (40) feet wide lot previously but needed a variance for that dwelling as well.
12. The Board found that Mr. Hayes testified that the variances requested are the minimum variances necessary to afford relief.
13. The Board found that Mr. Hayes testified that the Homeowners Association supports this request.
14. Phyllis Hayes was sworn in and testified in support of the Application.

15. The Board found that Mrs. Hayes testified that she has been in the development and there are large houses throughout the development.
16. The Board found that Mrs. Hayes testified that proposed dwelling will improve the community and that the proposed dwelling will improve the property values in the community.
17. The Board found that one (1) person appeared in support of the Application.
18. The Board found that no parties appeared in opposition to the Application.
19. The Board tabled the discussion of the case until February 29, 2016, at which time it discussed and voted on the Application.
20. 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 failed to meet the standards for granting a variance. The findings below further support the Board's decision to deny the Application.
  - a. The Applicant failed to convince the Board that the Property could not be developed in strict conformity with the Sussex County Zoning Code. Likewise, the Board was not convinced that the variances were necessary to enable the reasonable use of the Property. The Property is a vacant lot and the Applicant intends to construct a new dwelling thereon. The Applicant testified that he has previously built a narrower home on a smaller property and there was no evidence which persuaded the Board that the Applicant was unable to construct a home within the building envelope. In fact, it appears as though the Applicant has already constructed a dwelling in the past which would fit within this building envelope without the need for a variance from the Sussex County setback requirements. While the Applicant argued that he still needed a variance for the smaller home, he admitted that the property upon which the smaller home was built was a lot measuring 40 feet wide – 10 feet narrower than this lot.
  - b. The Board finds that the Applicant is creating his own exceptional practical difficulty by proposing to construct a dwelling which does not fit within the building envelope. The Applicant's decision to construct a larger home is the reason for the need for a variance and has nothing to do with the size of the Property. Since the Applicant is likely able to comply with the Sussex County Zoning Code, the need for the variance is something created by the Applicant's wants rather than an unusual physical condition relating to the Property.
  - c. The variances requested do not represent the minimum variances to afford relief. The Board finds that the Applicant could construct a dwelling to fit within the building envelope (as the Applicant has constructed a narrower dwelling in the past); in which case no variance would be necessary.

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

#### Decision of the Board

Upon motion duly made and seconded, the variance application was denied. The Board Members in favor of the motion to deny 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 deny the variance application.

BOARD OF ADJUSTMENT  
OF SUSSEX COUNTY

  
Dale Callaway  
Chairman

Date April 5, 2016