

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: PAULA WEIR

(Case No. 11827)

A hearing was held after due notice on August 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 setback requirement and a special use exception for a garage / studio apartment.

Findings of Fact

The Board found that the Applicant is seeking a variance of 4.3 feet from the thirty (30) feet front yard setback requirement for an existing dwelling, a variance of 14.3 feet from the thirty (30) feet front yard setback requirement for an existing deck, and a special use exception for a garage / studio apartment. This application pertains to certain real property located on the east side of Arrowhead Lane approximately 135 feet south of Camp Arrowhead Road (911 Address: 34126 Arrowhead Lane, Lewes); said property being identified as Sussex County Tax Map Parcel Number 2-34-12.18-22.00 & 23.00.

1. The Board was given copies of the Application, a survey of the Property dated April 7, 2016, aerial photographs of the Property, and a portion of the tax map of the area.
2. The Board found that the Office of Planning & Zoning received no correspondence in support of or in opposition to the Application.
3. The Board found that Paula Weir was sworn in to testify about the Application.
4. The Board found that Ms. Weir testified that the Property is unique in shape.
5. The Board found that Ms. Weir testified that the narrow lot combined two (2) parcels into one (1) lot.
6. The Board found that Ms. Weir testified that the dwelling and open deck were built in the 1970s. The deck provides access to the dwelling.
7. The Board found that Ms. Weir testified that the Applicant believed the property line went to the edge of the adjacent road but later learned that the property line does not extend to the road.
8. The Board found that Ms. Weir testified that the difficulty was not created by the Applicant.
9. The Board found that Ms. Weir testified that the builder believed the house was built in compliance with the Sussex County Zoning Code. The Applicant also believed the Property was in compliance with the Sussex County Zoning Code until a recent survey showed the encroachment.
10. The Board found that Ms. Weir testified that the variances do not alter the essential character of the neighborhood. There are other houses nearby which appear to be the same distance from the road as her house.
11. The Board found that Ms. Weir testified that the variances requested are the minimum variances necessary to afford relief.
12. The Board found that Ms. Weir testified that the variances are necessary to enable reasonable use of the Property.
13. The Board found that Ms. Weir testified that the garage / studio apartment is a new structure and will be located to the left of the existing dwelling. The garage / studio apartment will comply with setback requirements and will not exceed the maximum 800 square feet requirement.

14. The Board found that Ms. Weir testified that the garage / studio apartment will not substantially adversely affect the uses of the adjacent and neighboring properties.
15. The Board found that Ms. Weir testified that there will be adequate parking available for the apartment.
16. The Board found that no parties appeared in support of or in opposition to the Application.
17. 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 as it is irregularly shaped and, thus, has an oddly shaped building envelope. The Board notes that the Property is significantly wider than it is deep and that the dwelling constructed on the Property is also wider than it is deep. It is clear to the Board that the lot's unique characteristics have created an exceptional practical difficulty for the Applicant who seeks to retain an existing dwelling and open deck on the lot. The Board also notes that the edge of paving for the adjacent Arrowhead Lane does not match the front property line for the Property thereby making the front yard appear larger than it actually is.
 - b. Due to the uniqueness of the lot, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property is uniquely shaped and the Applicant seeks to retain an existing dwelling and deck 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 the Applicant to retain the existing dwelling and deck on the Property. The Board is convinced that the shape and location of the dwelling and deck are also 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 shape of the Property which has limited the building envelope on the Property. 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. The Applicant also relied to her detriment on a builder to place the dwelling and deck on the Property in compliance with the Sussex County Zoning Code only to learn many years later that the structures did not comply with the Code.
 - 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 variances will have no effect on the character of the neighborhood. The existing dwelling and deck have been on the Property for many years without a complaint noted in the record. Nearby homes are also located a similar distance from Arrowhead Lane. Furthermore, 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 regulation at issue. The Applicant has demonstrated that the variances sought will allow the Applicant to retain an existing dwelling and deck on the Property. No additions or modifications to those structures are proposed.

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 special use exception because the garage / studio apartment will not substantially affect adversely the uses of neighboring and adjacent properties. The findings below further support the Board's decision to approve the Application.

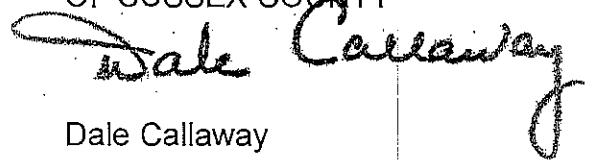
- a. The garage / studio apartment is located in a residential area on a property that was originally designed for two lots. The Property, though shallow, is a large lot and can clearly hold a dwelling and garage / studio apartment.
- b. The garage / studio apartment will meet all setback requirements and the Applicant will have a designated parking space for the resident of the apartment.
- c. No evidence was presented which demonstrated that the garage / studio apartment will have any adverse effect on neighboring and adjacent properties; let alone a substantial adverse effect.

The Board granted the special use exception and the variance application finding that it met the standards for granting a special use exception and a variance.

Decision of the Board

Upon motion duly made and seconded, the variance and special use exception 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 against the Motion to approve the variance and special use exception 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 18, 2016.