

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: WILLIAM SEEDS & SUSAN SEEDS

(Case No. 11834)

A hearing was held after due notice on September 12, 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 Applicants are seeking a variance of 4.6 feet from the thirty (30) feet front yard setback requirement for a proposed addition, a variance of 4.4 feet from the ten (10) feet side yard setback requirement on the north side for a proposed elevator, and a variance of 3.4 feet from the ten (10) feet side yard setback requirement on the south side for a proposed deck. This application pertains to certain real property is located on the west side of Keenwik Road approximately 958 feet south of Cedar Road (911 Address: 38222 Keenwik Road, Selbyville); said property being identified as Sussex County Tax Map Parcel Number 5-33-20.13-31.00.

1. The Board was given copies of the Application, a portion of the tax map of the area, an aerial photograph of the Property, and an undated survey of the Property.
2. The Board found that the Office of Planning & Zoning received one (1) letter in support of the Application and no correspondence in opposition to the Application.
3. The Board found that William Seeds and Jim Parker were sworn in to testify about the Application.
4. The Board found that Mr. Parker testified that the Property is in the Keenwik subdivision and the Property is unique because it measures 50 feet by 100 feet.
5. The Board found that Mr. Parker testified that the dwelling was placed on the Property in 1989 by a previous owner and the Applicants purchased the Property in 2008.
6. The Board found that Mr. Parker testified that, due to health problems, the proposed addition, deck, and elevator are needed. The proposed addition will allow the Applicants to move the master suite to the first floor of living area. The existing master suite is on the third floor.
7. The Board found that Mr. Parker testified that the Applicants did not create the exceptional practical difficulty and the variances will not alter the character of the neighborhood. There have been multiple variances granted in the development.
8. The Board found that Mr. Parker testified that, due to the layout of the existing home, the elevator needed to be placed on the north side of the home. The elevator could not be placed elsewhere without extreme cost to the Applicants and the proposed elevator's location will allow the best access to the existing interior layout of the dwelling.
9. The Board found that Mr. Parker testified that the dwelling on the neighboring property to the north is approximately 45 feet away and the dwelling to the neighboring property to the south is approximately 28 feet away.
10. The Board found that Mr. Parker testified that the dwelling is located on a block foundation and the garage is located under the dwelling. The garage will be extended five (5) feet to the east.

11. The Board found that Mr. Parker testified that the second floor is the main living area and the master suite will be located there. The master suite will be remodeled to be handicap accessible. The third floor of the addition will be an open deck.
12. The Board found that Mr. Parker testified that the additional space is needed to provide handicap accommodations.
13. The Board found that Mr. Seeds testified that his wife is handicapped and he suffers from back problems and the elevator is needed.
14. The Board found that Mr. Seeds testified that, if the elevator was placed in the rear of the dwelling, a variance would be needed as well.
15. The Board found that Mr. Seeds testified that approximately ten inches of water flooded the garage during Hurricane Sandy.
16. The Board found that Mr. Seeds testified that the existing garage is small and the addition will provide enough space to fit two cars in the garage.
17. The Board found that Mr. Seeds testified that the proposed elevator will allow the Applicants to access the first floor living area from the garage and the proposed elevator will be accessed from the existing garage under the existing dwelling. The garage will also be configured to provide handicap access to the elevator.
18. The Board found that Mr. Seeds testified that the laundry room will also be located on the first floor of living area.
19. The Board found that Mr. Seeds testified that that he has spoken with neighbors and they have no objection to the Application.
20. The Board found that no parties appeared in support of or 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, which the Board finds 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 situation is unique because the Applicants suffer from medical problems which limit their ability to use the Property. The Property contains an existing attached Cape Cod style dwelling on a block foundation which has the main living area on the third floor of the home. The Applicants seek to move the master suite to the second floor of the home (which is the first floor of living area) and to remodel this area to provide handicap accommodations. An elevator is needed to reach the living area. The Property, which is small and narrow and is subject to flooding is unique and this uniqueness has created a limited building envelope where a reasonable addition and elevator could be placed. The Board finds that the Applicants' medical condition and the limited building envelope of the Property have created an exceptional practical difficulty for the Applicants who wish to make reasonable additions to the Property. The situation is also unique because the dwelling was constructed on the Property by a prior owner.
 - b. Due to the uniqueness of the situation, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Applicants need to make a reasonable addition to the home to provide handicap accessibility and to install an elevator to provide safe access to the home. The need for better access and accommodations is imperative due to the Applicants' medical problems and the need for handicap accessibility in the home. The garage is located under the existing dwelling and is proposed to be expanded towards front yard to provide a foundation for the addition on the floor above the garage. The expansion will also allow for reasonable access to an elevator to be installed. Due to the existing layout of the dwelling, the elevator cannot be installed in compliance with the Code without extreme and unnecessary expense to the Applicants. The

Applicants seeks to build the addition, deck, and elevator but are unable to do so without violating the Sussex County Zoning Code. The Board is thus convinced that the variances are necessary to enable the reasonable use of the Property as the variances will allow the Applicants to make these reasonable improvements. The Board is convinced that the size, shape, and location of the addition, deck, and elevator are reasonable.

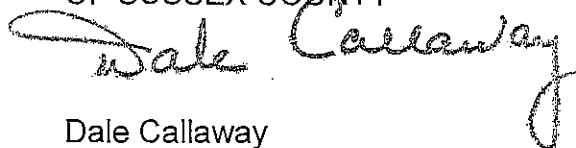
- c. The exceptional practical difficulty was not created by the Applicants. The Applicants did not create the small size of the Property, place the existing dwelling on the Property, or create their medical problems. The Property is small and narrow and the Applicants cannot make the reasonable improvements needed to accommodate their disability without violating the setback requirements. 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 Applicants but was created by the Applicants' medical condition and the uniqueness of the Property.
- 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 addition, deck, and elevator will have no effect on the character of the neighborhood. No evidence was submitted that the variances would somehow alter the essential character of the neighborhood or be detrimental to the public welfare. Notably, the nearby dwellings are located a significant distance from the side property lines so the impact on those lots should be minimal. Neighbors have also expressed support to the Applicants support of the Application.
- 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 Applicants have demonstrated that the variances sought will allow the Applicants to make the reasonable additions as previously discussed. The proposed additions are needed to provide the Applicants with reasonably access to the dwelling and to provide the necessary accommodations therein.
- f. The Board also finds that the Applicants suffer from a disability and that the variance approvals represent a reasonable accommodation.

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 November 9, 2011