

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: B&K INVESTMENTS, LLC

(Case No. 11887)

A hearing was held after due notice on December 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 a variance from the side yard setback requirement.

Findings of Fact

The Board found that the Applicant is seeking a variance of 4.1 feet from the ten (10) feet side yard setback requirement on the north side for a proposed dwelling. This application pertains to certain real property located on the west side of Bayberry Road approximately 617 feet south of Cedar Road (911 Address: 38269 Bayberry Road, Selbyville); said property being identified as Sussex County Tax Map Parcel Number 5-33-20.09-105.00.

1. The Board was given copies of the Application, a portion of the tax map, an aerial photograph of the Property, and a survey of the Property dated September 29, 2016.
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 Charles Shade was sworn in to testify about the Application.
4. The Board found that Mr. Shade testified that he is the construction manager for Clayton Homes and he has a client who wants to place a new modular home on the Property, which is located in Keen-Wik.
5. The Board found that Mr. Shade testified that the existing dwelling was in poor shape and had to be removed from the lot.
6. The Board found that Mr. Shade testified that the Property is unique because it is narrow and that the proposed dwelling will not fit on the Property due to the lot's narrowness.
7. The Board found that Mr. Shade testified that the proposed home will enhance the character of the neighborhood and the variance will not alter the essential character of the neighborhood.
8. The Board found that Mr. Shade testified that the proposed dwelling is a Cape Cod style home with gables and the Applicant wants the gables to face the canal.
9. The Board found that Mr. Shade testified that the Applicant is unsure whether he will finish the second floor of the home when it is constructed.
10. The Board found that Mr. Shade testified that the proposed dwelling will consist of approximately 1,515 square feet. Other homes in the neighborhood are approximately 1,500 square feet in size.
11. The Board found that Mr. Shade testified that the dwelling will be on a block foundation and raised to comply with the flood zone requirements.
12. The Board found that Mr. Shade testified that the Applicant wants the dormers to face the lagoon.
13. The Board found that Mr. Shade testified that the Applicant does not need to turn the house but the dwelling could be turned to fit within the building envelope.
14. The Board found that Mr. Shade testified that a smaller house could fit on the lot. Clayton Homes sells other models of homes but the Applicant chose the Cape Cod style home.

15. The Board found that Mr. Shade testified that he does not think he can meet the standards for granting a variance.
16. The Board found that Mr. Shade testified that the lot does not have severe flooding issues.
17. The Board found that Mr. Shade testified that the Property is serviced by central sewer and water.
18. The Board found that Mr. Shade testified that the Property is a larger lot than other lots in the neighborhood as it is approximately one-third greater than other lots.
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 failed to meet the standards for granting a variance. The findings below further support the Board's decision to approve 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 variance was necessary to enable the reasonable use of the Property. The Property is a vacant lot that is larger than other lots in the neighborhood. The previous dwelling on the Property has been removed and the Applicant intends to construct a new dwelling on the Property. The Applicant's representative testified that the proposed dwelling could be turned to fit within the building envelope but the Applicant wants the dormers to face the lagoon adjacent to the rear of the Property. If the Applicant were to turn the dwelling ninety degrees, he would be able to construct the dwelling within the building envelope and no variance would be needed. It appears to the Board that the sole reason for the variance is the Applicant's desire to place this particular model home on the Property in such a manner as to maximize his water views. The proposed development, however, fails to take into consideration the fact that the Board cannot grant a variance if the Applicant can develop the Property in strict conformity with the Sussex County Zoning Code. In fact, the Applicant's representative admitted that the Applicant was informed that he had to prove that he needed a variance and there was no guarantee that the variance would be approved. The survey clearly shows that the proposed dwelling can be placed on the Property – just not in the location the Applicant wants. The Applicant failed to convince the Board that there was some reason - other than the Applicant's desired water views - as to why the proposed dwelling could not be placed in compliance with the setback requirements. It is thus clear to the Board that the Applicant can build the proposed dwelling and develop the Property in strict conformity with the Sussex County Zoning Code and that the variance is not necessary to enable reasonable use of the Property.
 - 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 dwelling as proposed rather than turning the dwelling to fit within the building envelope is the reason for the need for a variance and has nothing to do with the size, shape, or condition of the Property. As such, the Board was not convinced that the variance request was the product of a *need*. Instead, the variance request appears to be the product of a *want* as the Applicant seeks to build the dwelling as proposed for purposes of convenience and profit, and / or caprice. Since the Applicant is likely able to comply with the Sussex County Zoning Code – a point which the Applicant's representative admits - the need for the variance is something created by the Applicant's wants rather

than an unusual physical condition relating to the Property. The Applicant has thus created his own exceptional practical difficulty. The Board also notes that this Property is approximately 1/3 larger and wider than other lots in the neighborhood and thus has room other lots in the neighborhood do not have to fit a home.

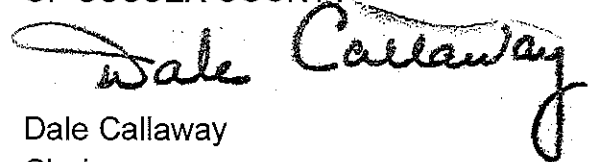
- c. Furthermore, since the dwelling can be placed on the Property in compliance with the Code, the variance for the dwelling is not the minimum variance necessary to afford relief. Rather, no variance for the dwelling will be needed since it can be placed in compliance with the Code.

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 the Application 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 2/7/17.