

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: MARY L. HARRINGTON

(Case No. 11901)

A hearing was held after due notice on January 9, 2017. The Board members present were: Mr. Dale Callaway, Mr. John Mills, Mr. Jeff Hudson, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for a variance from the front yard setback requirement.

Findings of Fact

The Board found that the Applicant is seeking 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 located on east side of Keen Wik Road approximately 672 feet south of Cedar Road (911 Address: 38193 Keen Wik Road, Selbyville); said property being identified as Sussex County Tax Map Parcel Number 5-33-20.09-68.01.

1. The Board was given copies of the Application, a survey dated December 13, 2016, an aerial photograph of the Property, and a portion of the tax map.
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 Ron Harrington, Mary Harrington, and Dave Baker were sworn in to testify about the Application.
4. The Board found that Mr. Baker testified that there is a discrepancy between the Keen Wik setback requirements and Sussex County setback requirements. Keen Wik requires a setback of 20 feet in the rear yard and Sussex County only requires a setback of 10 feet from the rear yard property line. The Applicant requests the variance to conform with the Keen Wik setback requirements.
5. The Board found that Mr. Baker testified that the Property is unique due to the different setback requirements.
6. The Board found that Ms. Harrington testified that the existing dwelling is approximately 45 years old.
7. The Board found that Mr. Baker testified that the existing dwelling is too small for the family and the Applicant proposes to construct a new home that will better accommodate her family.
8. The Board found that Mr. Baker testified that the proposed dwelling will be three (3) stories tall and have five (5) bedrooms. Each floor will consist of approximately 1,600 square-feet. The existing home consists of two (2) stories and consists of 1,800 square feet.
9. The Board found that Mr. Baker testified that there will be one (1) bedroom on the first level, three (3) bedrooms on the second level, and one (1) bedroom on the third level. There is a proposed living area on both the first and third floors.
10. The Board found that Mr. Baker testified that a smaller footprint will not allow for the five (5) bedrooms they are seeking.
11. The Board found that Mr. Baker testified that the difficulty has not been created by the Applicant as the Applicant did not create the different setback standards.
12. The Board found that Mr. Baker testified that the variances will not alter the character of the neighborhood.
13. The Board found that Mr. Baker testified that the proposal will comply with the community's standards.
14. The Board found that Mr. Baker testified that the neighboring dwellings are twenty-five (25) feet from the front property line.

15. The Board found that Mr. Baker testified that the variance requested is the minimum variance necessary to comply with the community's standards.
16. The Board found that Mr. Baker testified that there is a gap of 8 to 10 feet between the edge of paving and the front property line.
17. The Board found that Ms. Harrington testified that Keen Wik Homeowners Association will not allow any structures to encroach into the required twenty (20) feet rear yard setback requirement.
18. The Board found that Ms. Harrington testified that there are no flooding issues.
19. The Board found that Ms. Harrington testified that the neighbors have no objection to the Application.
20. The Board found that Mr. Harrington testified that the Keen Wik Homeowners Association strictly enforces the rear yard setback requirement so as to not block any water views in the neighborhood.
21. The Board found that Nikki Harrington was sworn in and testified in support of the Application.
22. The Board found that Nikki Harrington testified that the variance is necessary to enable reasonable use of the Property and that the proposed dwelling will function well for the whole family to enjoy the Property.
23. The Board found that Nikki Harrington testified that the Property has been in the family for forty-two (42) years.
24. The Board found that one (1) party appeared in support of the Application.
25. The Board found that no parties appeared in opposition to the Application.
26. The Board tabled the Application until February 6, 2017, at which time the Board discussed and voted on the Application.
27. 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 due to its small size. The Property is narrow and is located adjacent to a lagoon. The unique characteristics of this Property limit the buildable area available to the Applicant and have created an exceptional practical difficulty for the Applicant. The Applicant is also restricted in where she can build on the Property due to setback requirements set forth in the community which differ from the Sussex County setback requirements. Notably, the rear yard setback for the community is 20 feet which the Sussex County rear yard setback requirement is 10 feet. The uniqueness of the Property is evident when reviewing the 2016 site plan submitted by the Applicant. The different setback requirements further limit an already small building envelope.
 - b. Due to the uniqueness of the lot, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Applicant seeks to construct a dwelling of a reasonable size but is unable to do so without violating the Sussex County Zoning Code. The Board is convinced that the variance is necessary to enable the reasonable use of the Property as the variance will allow a reasonably sized dwelling to be placed on the Property. The Board is convinced that the size, shape, and location of the dwelling are reasonable, which is confirmed when reviewing the site plan. The Board notes that, if the setbacks in the community's restrictive covenants matched the setbacks in the Sussex County Zoning Code, the Applicant would be able to construct the home without a variance.
 - c. The exceptional practical difficulty was not created by the Applicant. The Applicant did not create the unusual size of the Property. Rather, the lot was created by a prior owner. The Applicant also did not create the

community's restrictions which further limit the buildable area of the lot. The limited building envelope of the Property has created the exceptional practical difficulty. The unique characteristics of the Property are clear when reviewing the survey and site plan. The Board also notes that the existing dwelling is approximately 45 years old and needs to be replaced.

- d. The variance 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 proposed dwelling is consistent with other homes in Keen-wik as the unrebutted testimony confirms that other homes are located 25 feet from the front property line. The Board also notes that there is a difference of 8 to 10 feet between the edge of paving and the front property line which makes the front of the Property appear larger than it actually is. No evidence was presented which would indicate that the variance would somehow alter the essential character of the neighborhood or be detrimental to the public welfare.
- e. The variance sought is the minimum variance necessary to afford relief and the variance requested represent the least modification possible of the regulation at issue. The Applicant has demonstrated that the variance sought will allow the proposed dwelling to be built in the proposed location.

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. Jeff Hudson, Mr. John Mills, and Mr. Brent Workman. No Board Member voted against the Motion to approve the variance application. Mr. Dale Callaway and Mr. Norman Rickard did not vote on this 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 3/8/2017