

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: KATHERINE K. PERGOLA & DENNIS PERGOLA

(Case No. 11940)

A hearing was held after due notice on April 3, 2017. The Board members present were: Mr. Dale Callaway, Mr. John Mills, Mr. Jeff Hudson, Mr. Norman Rickard, 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 requesting a variance of 6.57 feet from the forty (40) feet front yard setback requirement for an existing dwelling and a variance of 3.09 feet from the fifteen (15) feet side yard setback requirement on the south side for a detached garage. This application pertains to certain real property on the north side of Gills Neck Road 1.8 miles east of Kings Highway (Route 9) (911 Address: 16118 Gills Neck Road, Lewes); said property being identified as Sussex County Tax Map Parcel Number 3-35-9.00-3.02.

1. The Board was given copies of the Application, a portion of the tax map of the area, an aerial photograph of the Property, a survey of the Property dated September 26, 2016, a survey of the Property dated August 1, 2004, a survey of the Property dated November 9, 1995, and pictures of the Property.
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 Dennis Pergola and Abby Steele were sworn in to testify about the Application. Bill Schab, Esquire, presented the case on behalf of the Applicants.
4. The Board found that Mr. Schab stated that the Property was acquired by the Applicants in 1997.
5. The Board found that Mr. Schab stated that the Property has an odd triangle shape and the boundary line changed over the years.
6. The Board found that Mr. Schab stated that the existing dwelling was built by Herring Creek Builders in 1998. In 2010, the detached garaged was built in the rear of the Property.
7. The Board found that Mr. Schab stated that the side property line turns near the garage. A fence was located along the property line but did not match the property line near the garage.
8. The Board found that Mr. Schab stated that, in 2010, a Certificate of Compliance was issued for the existing garage.
9. The Board found that Mr. Schab stated that the Applicants later learned that the rear corner of the garage encroached into the setback area.
10. The Board found that Mr. Schab stated that, in 2016, a bedroom and a front porch addition were constructed and inspections showed the new additions did not comply with the Sussex County Zoning Code.
11. The Board found that Mr. Schab stated that the Applicants relied on the builder to construct the house, addition, and garage in compliance with the Code. The builders admitted to their mistakes.
12. The Board found that Mr. Schab stated that a Certificate of Occupancy for the addition cannot be granted unless a variance is approved.
13. The Board found that Mr. Schab stated that the garage and addition are attractive.
14. The Board found that Mr. Schab stated that the variances will not alter the essential character of the neighborhood.

15. The Board found that Mr. Schab stated that the home is a similar distance from Gills Neck Road as neighboring homes on neighboring properties.
16. The Board found that Mr. Schab stated that the shed in the rear has been removed.
17. The Board found that Ms. Steele testified that she is a representative of Herring Creek Builders. Herring Creek Builders was under the assumption that the fence was located on the property line and Herring Creek Builders assumed the front setback for the addition was thirty (30) feet.
18. The Board found that Ms. Steele testified that a neighboring house is 34 feet from the property line.
19. The Board found that Ms. Steele testified that a survey was not completed on this project.
20. The Board found that Ms. Steele testified that the Applicants were not at fault and these mistakes cannot be easily fixed.
21. The Board found that Mr. Pergola, under oath, affirmed the statements made by Mr. Schab.
22. The Board found that Mr. Pergola testified that he was under the impression that all the building projects were being completed in compliance with the Code.
23. The Board found that Mr. Pergola testified that the mistake with the side yard setback may have been due to the location of an old fence near the property line.
24. The Board found that Mr. Pergola testified that the addition was for a porch and an additional room.
25. The Board found that Mr. Pergola testified that none of his neighbors have indicated an objection to the variance requests.
26. The Board found that Mr. Pergola testified that there is a new development nearby with larger homes.
27. Ms. Steele testified that the building permit stated the front yard setback requirement was forty (40) feet and that a Certificate of Compliance was issued for the garage.
28. The Board found that Mr. Pergola testified that there is fifteen (15) feet from the edge of paving to the property line.
29. The Board found that no parties appeared in support of or in opposition to the Application.
30. 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 unique shape. The Property is shaped like a triangle and the side property lines converge at a sharp angle to a point in the rear yard. The odd shape of the Property is clear from a review of the survey and the odd shape has created a unique building envelope. The Property also has an old fence which is located adjacent to the side property line. The existence of this old fence gives the false impression as to the location of the side property line. Likewise, the front property line is approximately 15 feet from the edge of paving of Gills Neck Road thereby giving the false impression that the front yard is larger than it actually is. Ultimately, these conditions have created an exceptional practical difficulty for the Applicants who seek to retain the existing dwelling and garage on the lot.
 - b. Due to the uniqueness of the lot, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property has a unique shape and the buildable area thereof is limited due to its shape. The Applicants seek to retain a dwelling and garage of reasonable size but are 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 a reasonably sized dwelling and garage to remain on the Property. The Board is convinced that the shape and location of the dwelling and garage are also reasonable, which is confirmed when reviewing the survey provided by the Applicants.

- c. The exceptional practical difficulty was not created by the Applicants. The Applicants did not create the unusual shape of the Property and the unique lot shape has resulted in a limited building envelope on the Property and the small building envelope has created the exceptional practical difficulty for the garage. The garage complies with the side yard setback requirement in the front corner but the rear corner encroaches into the setback area due to the sharp angle of the side property line. The unique characteristics of the Property are clear when reviewing the survey. Additionally, the Applicants did not construct the dwelling and garage on the Property. Those structures were constructed by a contractor who admitted to making mistakes when constructing those structures. The Applicants, thus, relied on the contractor to their detriment. The Board is convinced that the exceptional practical difficulty was not created by the Applicants but was created the lot's unique characteristics and by the placement of the dwelling and garage in the setback area by the contractors.
- 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 dwelling and garage will have no effect on the character of the neighborhood. The garage has been on the Property since 2004 yet no complaint has been noted in the record. If the garage had some negative impact on the neighborhood, the Board would expect evidence demonstrating such effect to be introduced into the record. On the other hand, while the encroaching portion of the dwelling has only recently been constructed, the dwelling itself is a similar distance from Gills Neck Road as a home on neighboring property. There is also a gap of approximately 15 feet from the front property line and the edge of paving of Gills Neck Road so the encroachment into the front yard setback is likely unnoticeable. 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 regulations at issue. The Applicants have demonstrated that the variances sought will allow the Applicants to retain a reasonably sized dwelling and garage on the Property. No additions or modifications to the dwelling are being proposed.

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 Members 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 May 16, 2017