

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: MORRIS L. LEWIS

(Case No. 11982)

A hearing was held after due notice on July 10, 2017. The Board members present were: Mr. Dale Callaway, Ms. Ellen Magee, Mr. John Mills, and Mr. Brent Workman.

Nature of the Proceedings

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

Findings of Fact

The Board found that the Applicant is seeking a variance of five (5) feet from the twenty (20) feet rear yard setback requirement for a proposed deck. This application pertains to certain real property located on the southwest side of Wilson Avenue approximately 300 feet south of Lincoln Drive (911 Address: 38788 Wilson Avenue, Selbyville); said property being identified as Sussex County Tax Map Parcel Number 5-33-20.14-65.00.

1. The Board was given copies of the Application, a portion of the tax map of the area, a survey of the Property dated March 24, 2017, a deed to the Property, and aerial photograph 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 Morris Lewis was sworn in to testify about the Application. Raymond Tomasetti, Esquire, presented the case on behalf of the Applicant and submitted exhibits for the Board to review including pictures of the Property and the neighborhood.
4. The Board found that Mr. Tomasetti stated that the Property is vacant and the dwelling previously located on the Property was demolished.
5. The Board found that Mr. Tomasetti stated that the proposed home will comply with the side and front yard setback requirements.
6. The Board found that Mr. Morris, under oath, affirmed the statements made by Mr. Tomasetti.
7. The Board found that Mr. Lewis testified that he purchased the Property in 2003 and he demolished the previous home because it was a liability. A portion of the previous home was an older manufactured home and the Applicant had difficulty obtaining insurance for the home. The home was also underwater whenever a Nor' Easter hit the Property.
8. The Board found that Mr. Lewis testified that the development was created in 1967.
9. The Board found that Mr. Lewis testified that that the proposed home, which will be a Cape Code style home, will be located on pilings.
10. The Board found that Mr. Lewis testified that the previous home violated the side yard setback requirement. The proposed home will comply with the side yard setback requirements and will be in the same location pertaining to the rear yard as the previous home. All HVAC systems will be placed within the building setback areas and there will be no sheds on the Property. The stairs to the dwelling and the deck will be placed within the building envelope as well.
11. The Board found that Mr. Lewis testified that the Property measures 85 feet by 50 feet.
12. The Board found that Mr. Lewis testified that the proposed dwelling will not alter the essential character of the neighborhood.
13. The Board found that Mr. Lewis testified that the home on the adjacent Lot 28 is located close to the canal as are other homes in the area.

14. The Board found that Mr. Lewis testified that the hardship was created by the neighboring homes being located so close to the canal.
15. The Board found that Mr. Lewis testified that views from the home are important.
16. The Board found that Mr. Lewis testified that, if the Property was not subject to flooding, the deck could be built in compliance with the Sussex County Zoning Code. The home, however, must be elevated on pilings due to the flooding problems so the deck is also raised above ground level. The deck will be 8 feet from ground level.
17. The Board found that Mr. Lewis testified that the dwelling will include a smaller second floor deck that will cover approximately 30% of the first floor deck. Most of the first floor deck is uncovered.
18. The Board found that Mr. Lewis testified that parking is a problem in the community and the front portion of the Property is needed for parking.
19. The Board found that no parties appeared in support of or in opposition to the Application
20. 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 unrebutted, 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 a small lot consisting of only 4,250 square feet and the Property suffers from flooding problems. The small size of the lot has created an exceptionally limited building envelope and this building envelope is further limited by the flooding problems in the rear yard. Additionally, parking is a problem in the neighborhood and the front part of the Property, including part of the building envelope, is needed to provide adequate off-street parking for the Property. These unique physical conditions have created an exceptional practical difficulty for the Applicant, who seeks to construct a reasonably sized deck on the Property.
 - 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 small building envelope and is subject to flooding. The Applicant seeks to construct a reasonably sized deck but is unable to do so without violating the Sussex County Zoning Code. The deck would comply with the Sussex County Zoning Code if the Property was not subject to flooding and the deck did not have to be raised above the flood waters. The variance is thus necessary to enable reasonable use of the Property as the variance will allow a reasonably sized deck to be constructed on the Property. The Board is convinced that the shape and location of this 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 unique size of the lot or its flooding problems both of which have resulted in a limited building envelope on the Property. The unique characteristics of the Property are clear from the record and the survey. The Board notes that the Property was developed as part of the Cape Windsor community in 1967 and the Applicant did not purchase his lot until 2003. The Board is convinced that the exceptional practical difficulty was not created by the Applicant but was created by the lot's unique characteristics. The parking issues in the neighborhood have also reduced the available building envelope.
 - 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 deck will have no effect on the character of the neighborhood. The deck will be located in the rear of the Property adjacent

to a canal and will be located a similar distance from the lagoon as other nearby homes. 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. The previous home on the Property was also located a similar distance from the canal.

- e. The variance sought is the minimum variance necessary to afford relief and the variance requested represents the least modification possible of the regulation at issue. The Applicant has demonstrated that the variance sought will allow the Applicant to construct a reasonably sized deck on the Property which can be reasonably used by the Applicant. The Applicant also has designed the house and deck to limit encroachments of the structures into the setback areas. The Board notes that the design of the house is impressive due to the physical limitations of the lot and the Applicant has convinced the Board that he has taken measures to otherwise comply with the Sussex County Zoning Code. The home will also be more compliant with the Code than the previous dwelling.

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, Ms. Ellen Magee, Mr. John Mills, and Mr. Brent Workman. No Board Member voted against the Motion to approve the variance application. Mr. Norman Rickard did not participate in the discussion or 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 August 22, 2017