

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: THOMAS B. HANEY & TINA A. HANEY

(Case No. 11983)

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 variances from the front yard and side yard setback requirements.

Findings of Fact

The Board found that the Applicants are seeking a variance of 5 feet from the thirty (30) feet front yard setback requirement for a proposed addition and a variance of 0.5 feet from the ten (10) feet side yard setback requirement on the southwest side for a proposed set of stone wrapped posts. This application pertains to certain real property located on the east side of Maple Lane approximately 1,377 feet south of Cedar Road (911 Address: 38397 Maple Lane, Selbyville); said property being identified as Sussex County Tax Map Parcel Number 5-33-19.16-51.00.

1. The Board was given copies of the Application, a portion of the tax map of the area, an aerial photograph of the Property, a picture of the Property, and a survey of the Property dated January 18, 2017.
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 Thomas Haney and Tina Haney were sworn in to testify about the Application and submitted pictures to the Board to review.
4. The Board found that Mr. Haney testified that the requested variances are for a proposed addition. He and his family are moving to the existing dwelling as their full-time residence but the existing garage is only 20 feet deep and his truck is 22 feet long and will not fit in the garage.
5. The Board found that Mr. Haney testified that he stores equipment related to his disc jockey business in the truck.
6. The Board found that Mr. Haney testified that the garage will provide more open space in the front yard for parking of other vehicles.
7. The Board found that Mr. Haney testified that parking is an issue in the community as cars are often parked along the street.
8. The Board found that Mr. Haney testified that the neighboring dwelling to the southwest encroaches into the setback area.
9. The Board found that Mr. Haney testified that most of the homes in the neighborhood are two story homes and the proposed addition will be consistent with the homes in the development.
10. The Board found that Mr. Haney testified that the Applicant proposes to repair the posts for an existing deck and to place stone around the post to enhance its appearance. The requested 1 foot variance is for the purpose of expanding the deck posts all the way to the ground to create more support.
11. The Board found that Mr. Haney testified that the bulkhead in the rear yard was just replaced.
12. The Board found that Mr. Haney testified that the front property line does not match the edge of paving of Maple Lane and there is approximately 3 feet between the edge of paving and the front property line.
13. The Board found that Mr. Haney testified that the Applicants just purchased the Property and did not construct the home.

14. The Board found that no parties appeared in support of or in opposition to the Application.
15. 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 Property is unique due to its small size as it only consists of 6,306 square feet. The Property is also narrow and is located adjacent to a lagoon. The unique characteristics of this Property limit the buildable area available to the Applicants and have created an exceptional practical difficulty for the Applicants. The uniqueness of the Property is evident when reviewing the site plan submitted by the Applicant.
 - 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 garage addition and support posts for an existing deck 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 those improvements to be made to the Property. The Board notes that the garage is not large enough to accommodate a reasonably sized truck and the addition is needed to provide cover for the Applicants' truck which houses equipment related to his business. The modest expansion of the support posts will provide additional support for the deck and improve the safety thereof. The Board is convinced that the size, shape, and location of the additions are reasonable, which is confirmed when reviewing the site plan.
 - c. The exceptional practical difficulty was not created by the Applicants. The Applicants did not create the unusual size of the Property. Rather, the lot was created by a prior owner. The Applicants also did not construct the existing home, which has portions thereof that encroach into the setback areas. 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.
 - 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 proposed dwelling is consistent with other homes in Keen-wik. The Board also notes that there is a difference of 3 feet between the edge of paving and the front property line which makes the front of the Property appear larger than it actually is. The front yard encroachment is, thus, unlikely to be noticed. Likewise, the side yard encroachment for posts related to an existing deck is 1 foot and is unlikely to be noticed without a survey. 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 a reasonably sized addition to the garage and reasonable improvements to the support posts on the deck to be constructed. The Board notes that the Applicants did not construct the home, which had other encroaching features, but the Applicants will be removing the other encroaching features.

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 as modified. 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.