

**BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY**

**IN RE: DOUGLAS A. KELLER & PATRICIA S. KELLER**

**(Case No. 11988)**

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 setback requirement.

Findings of Fact

The Board found that the Applicants are seeking a variance of 19.5 feet from the thirty (30) feet front yard setback requirement for proposed steps and a variance of 16.5 feet from the thirty (30) feet front yard setback requirement for a proposed dwelling. This application pertains to certain real property located at the southeast side of West Virginia Avenue approximately 242 feet northeast of North Bayshore Drive (Route 16B) (911 Address: 1 West Virginia Avenue, Broadkill Beach); said property being identified as Sussex County Tax Map Parcel Number 2-35-4.13-41.00.

1. The Board was given copies of the Application, a survey dated June 17, 2016, a portion of the tax map of the area, an aerial photograph of the Property, a septic plan of the Property dated July 18, 2016, a site plan of the Property, drawings of the proposed dwelling, and a permit from the Delaware Department of Natural Resources & Environmental Control ("DNREC").
2. The Board found that the Office of Planning & Zoning received one (1) letter in support of the application and no correspondence in opposition to the Application.
3. The Board found that Douglas Keller and Patricia Keller were sworn in to testify about the Application. Shannon Carmean Burton, Esquire, presented the case on behalf of the Applicants and submitted exhibits for the Board to review.
4. The Board found that Mrs. Burton stated that the Applicants propose to replace the existing dwelling with a new dwelling. The Property is currently improved with a non-conforming dwelling, which was constructed around 1960, and a shed.
5. The Board found that Mrs. Burton stated that the existing dwelling has a setback of 9 feet and the stairs to the home have a setback of 3.7 feet.
6. The Board found that Mrs. Burton stated that the Applicants plan to remove the shed once the septic system is installed.
7. The Board found that Mrs. Burton stated that the Property is zoned MR.
8. The Board found that Mrs. Burton stated that the Property is unique due to its "L" shape. The Property also abuts the Delaware Bay.
9. The Board found that Mrs. Burton stated that the existing dwelling has ground level living space and a basement.
10. The Board found that Mrs. Burton stated that the uniqueness of the Property has created the exceptional practical difficulty.
11. The Board found that Mrs. Burton stated that the proposed dwelling will be constructed to minimize potential damage from storms and flooding. The home will be placed on pilings.
12. The Board found that Mrs. Burton stated that the building envelope is reduced due DNREC building restrictions. The existing home is considered to be grandfathered by DNREC.
13. The Board found that Mrs. Burton stated that the proposed dwelling will comply with side yard and rear yard setback requirements and the proposed dwelling will encroach less into the front yard setback than the existing dwelling.

14. The Board found that Mrs. Burton stated that the Applicants have received a septic permit.
15. The Board found that Mrs. Burton stated that there is no possibility the Property can be developed in strict conformity with the Sussex County Zoning Code and the variances are necessary to enable reasonable use of the Property.
16. The Board found that Mrs. Burton stated that the Applicants purchased the Property in 1996.
17. The Board found that Mrs. Burton stated that the new dunes completely block the Applicants' view of the Delaware Bay.
18. The Board found that Mrs. Burton stated that the exceptional practical difficulty has not been created by the Applicants. The Applicants did not create the size of the lot or place the existing home on the lot.
19. The Board found that Mrs. Burton stated that the variances, if approved, will not alter the essential character of the neighborhood or impair the use of neighboring properties. Nearby properties have also received variances.
20. The Board found that Mrs. Burton stated that the variances will not be detrimental to the public welfare.
21. The Board found that Mrs. Burton stated that the variances requested represent the minimum variances to afford relief and the least modifications of the regulation at issue.
22. The Board found that Mr. and Mrs. Keller, under oath, affirmed the statements made by Mrs. Burton.
23. The Board found that Mrs. Keller testified that the proposed dwelling is to be located in a position that will not block their neighbor's view of the Delaware Bay.
24. The Board found that Mrs. Keller testified that the proposed location of the dwelling was the only place where the home could be placed which met the DNREC requirements. The unique shape of the Property also limited the placement options for the home. The Applicants also wanted to place the home as far away from the Delaware Bay as possible.
25. The Board found that Mr. Keller testified that DNREC required that the septic system be placed in the rear portion of the Property.
26. The Board found that no parties appeared in support of or in opposition to 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 exceptionally unique due to its shape and the building restrictions set forth by DNREC. The DNREC restrictions greatly limit where the septic system can be placed as well as the location of a dwelling. These restrictions also greatly limit the buildable area of the lot and this building envelope is further limited by the unique shape of the Property. The Property is shaped like an "L" and significant portions of the Property are unbuildable. Ultimately, the unique characteristics of this Property limit the buildable area available to the Applicants and have created an exceptional practical difficulty for the Applicants who seeks to construct a reasonably sized home 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 as well as the DNREC requirements. The Applicants seek to construct a dwelling of a reasonable size but are unable to do so without violating the Sussex County Zoning Code. The home will be constructed on pilings to

minimize damage from floods and storms – which is important since the Property is adjacent to the Delaware Bay. Since the home will be elevated, stairs are needed to access the living areas of the home and the stairs cannot be located within the setback area. The Board is convinced that the variances for the dwelling and stairs are necessary to enable the reasonable use of the Property as the variances will allow a reasonably sized dwelling with stairs to be constructed. The Board is convinced that the shape and location of this dwelling are also reasonable, which is confirmed when reviewing the survey and drawings provided by the Applicants. It appears impossible to the Board that a home of a reasonable size could be constructed on the lot in strict conformity with the Sussex County Zoning Code while not infringing on the DNREC regulated areas.

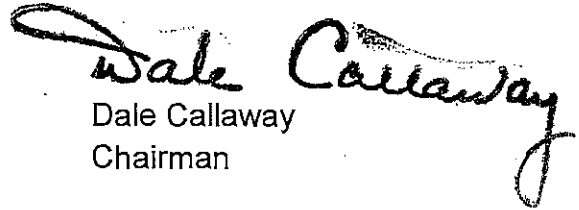
- c. The exceptional practical difficulty was not created by the Applicants. The Applicants did not create the unusual shape of the Property or the DNREC regulations; all of which have resulted in a limited building envelope on the Property. The oddly shaped building envelope has created the exceptional practical difficulty. Furthermore, the existing dwelling was placed on the Property by a prior owner many years ago and needs to be removed. Notably, the existing dwelling encroaches farther into the setback area than the proposed dwelling. The unique characteristics of the Property are clear when reviewing the survey. The Board is convinced that the exceptional practical difficulty was not created by the Applicants but was created the lot's unique characteristics.
- 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 will have no effect on the character of the neighborhood. The dwelling will be in a similar location as the existing dwelling on the Property and will be constructed in a manner similar to other homes in the neighborhood. The dwelling will be less encroaching into the setback area than the existing dwelling and the Applicants have designed the home to not block a neighbor's views of the Delaware Bay. It is difficult to see how the replacement of the existing dwelling with a modest sized home of new construction consistent with other homes in the neighborhood would somehow be detrimental to the character of the neighborhood. No evidence was presented that demonstrated 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 proposed location of the dwelling is the only place where the home can be located. The Applicants are significantly constrained in the placement of the home by the DNREC building requirements and the odd shape of the Property. The Applicants also seek to place the home away from the Delaware Bay to avoid flood and storm damage. The Board notes that the proposed dwelling significantly reduces the front yard encroachment of the existing home.
- f. The existing shed will be removed from the Property when the septic system is installed.

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.