

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

**IN RE: THOMAS B. ELLIS & KAREN B. ELLIS**

**(Case No. 11996)**

A hearing was held after due notice on July 24, 2017. The Board members present were Mr. Dale Callaway, Ms. Ellen Magee, Mr. John Mills, Mr. Norman Rickard, 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 5.0 feet from the ten (10) feet side yard setback requirement on the northwest side for a proposed chimney, a variance of 4.0 feet from the ten (10) feet side yard setback requirement on the northwest side for a proposed dwelling, and a variance of 19.1 feet from the forty (40) feet front yard setback requirement for a proposed dwelling. This application pertains to certain real property is located at the north side of River Road (Road 312) approximately 79 feet west of the intersection of Pond Road (Road 312 A) and River Road (Road 312) (911 Address: 31498 River Road, Millsboro); said property being identified as Sussex County Tax Map Parcel Number 2-34-34.10-62.00.

1. The Board was given copies of the Application, a deed to the Property, an undated site plan of the Property, a portion of the tax map of the area, an aerial photograph of the Property, and drawings of the dwelling.
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 Ellis and Karen Ellis were sworn in to testify about the Application. Raymond Tomasetti, Esquire, presented the case on behalf of the Applicants and submitted exhibits for the Board to review including pictures of the Property and a survey of the Property dated September 19, 2016.
4. The Board found that Mr. Ellis testified that the Applicants purchased the Property in September 2016 and they intended to renovate the existing dwelling but, during the renovation projection, the Applicants discovered significant mold problems.
5. The Board found that Mr. Ellis testified that the existing house was built in 1934 and several additions were made thereto and the mold appears to be related to dampness in the crawl space.
6. The Board found that Mr. Ellis testified that he is a cancer survivor and that he was recently diagnosed with sarcoidosis which may be related to the mold.
7. The Board found that Mr. Ellis testified that there is no easy way to remediate the mold problem so the Applicants propose to demolish the existing home and replace it with a new home. The proposed home will be elevated 3 feet and they plan to install an encapsulated dehumidifier system underneath the home.
8. The Board found that Mr. Ellis testified that the Property has a natural bluff which is 12-13 feet above the adjacent Indian River and the Property slopes towards Indian River. The bluff limits the use of the rear of the Property.
9. The Board found that Mr. Ellis testified that approximately 35 feet of the rear yard is either the slope from the bluff or lands close to Indian River and the topography of the rear yard limits the building envelope.
10. The Board found that Mr. Ellis testified that the Applicants intend to retire on the Property and need first floor living so the home will not be elevated. The dwelling will consist of approximately 1,500 square feet.

11. The Board found that Mr. Ellis testified that the Property is serviced by sewer and well. The well is located to the southwest of the proposed dwelling which limits the Applicants' options in moving the home to meet the side yard setback requirements.
12. The Board found that Mr. Ellis testified that his neighbor's house to the southeast is approximately 1 foot from the property line. The Applicants also seek to maintain a buffer between their home and the home on the lot to the southeast because that home is located very close to the property line.
13. The Board found that Mr. Ellis testified that the proposed dwelling will reduce the non-conformities related to the existing home.
14. The Board found that Mr. Ellis testified that the variances are necessary to enable reasonable use of the Property and the variances requested are the minimum variances necessary to afford relief.
15. The Board found that Mr. Ellis testified that the Applicants did not create the need for the variances.
16. The Board found that Mr. Ellis testified that the variances will not alter the essential character of the neighborhood. Other homes in the neighborhood are close to property lines and the proposed dwelling is similar to other homes in the neighborhood. The adjacent neighbors do not object to the Application either.
17. The Board found that no parties appeared in support of or in opposition to the Application
18. 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 topography. The Property is located adjacent to Indian River and slopes towards the rear of the Property. The unique topography of the Property greatly limits the buildable area available to the Applicants and has created an exceptional practical difficulty for the Applicants who seek to construct a dwelling on the lot. The situation is also unique because the lot was improved by a dwelling constructed in 1934 but, after starting to renovate the home, the Applicants discovered mold problems and Mr. Ellis even suffered from mold-related illness. The Applicants needed to demolish the home in order to remediate this problem. The Board also notes that the home to the southeast of the Property is located very close to the property line and the well is located on that side of the Property as well so the Applicant needed to design the home to be located away from that side property line.
  - b. Due to the uniqueness of the lot and the situation, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property has a unique topography and the buildable area thereof is limited due to its topography. The Applicants seek to construct a dwelling of reasonable size but are unable to do so without violating the Sussex County Zoning Code. The Applicants plan to retire to the home and need a home that has first floor living accommodations. 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 to be constructed on the Property. The Board is convinced that the shape and location of the dwelling are also reasonable, which is confirmed when reviewing the site plan provided by the Applicants.
  - c. The exceptional practical difficulty was not created by the Applicants. The Applicants did not create the unusual topography of the Property. The unique lot topography has resulted in a limited building envelope on the Property and the small building envelope has created the exceptional

practical difficulty. The unique characteristics of the Property are clear when reviewing the survey. Additionally, the Applicants did not place the prior dwelling on the Property or create the mold problem related to that home. Rather, the home was placed on the Property by prior owners and the Applicants did not discover the mold problem until after beginning renovating the home. 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 need to replace the existing home due to the mold problems.

- 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 will have no effect on the character of the neighborhood. The prior dwelling, which encroaches more than the proposed dwelling, has been on the Property for many years yet no complaint has been noted in the record. If the previous home had some negative impact on the neighborhood, the Board would expect evidence demonstrating such effect to be introduced into the record. Rather, the Applicants have indicated that their neighbors support the Application. 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. The Board also notes that the proposed dwelling will reduce the degree of non-conformities related to structures on the lot.
- 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 construct a reasonably sized dwelling on the Property. The Applicants have also reduced the degree of non-conformity on the lot.

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, Mr. Norman Rickard, and Mr. Brent Workman. No Board Member 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 September 19, 2017