

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: JEFF GEHRS & ELLEN GEHRS

(Case No. 12091)

A hearing was held after due notice on January 22, 2018. The Board members present were: Mr. Dale Callaway, Ms. Ellen Magee, and Mr. John Mills.

Nature of the Proceedings

This is an application for variances from the front yard, corner front yard, and rear yard setback requirements.

Findings of Fact

The Board found that the Applicants are seeking a variance of 5.0 feet from the fifteen (15) feet corner front setback requirement along Davis Street for a proposed dwelling, a variance of 4.9 feet from the fifteen (15) feet corner front setback requirement along Davis Street for a proposed deck, and a variance of 5.0 feet from the ten (10) feet rear yard requirement for a proposed deck. This application pertains to certain real property located on the southwest corner of the intersection of Davis Street and Assawoman Street. (911 Address: 39907 Assawoman Street, Bethany Beach); said property being identified as Sussex County Tax Map Parcel Number 1-34-20.12-20.00.

1. The Board was given copies of the Application, a survey of the Property dated September 25, 2017, an aerial photograph of the Property, and a portion of the tax map of the area.
2. The Board found that the Office of Planning & Zoning received no correspondence in support of the Application and three (3) letters in opposition to the Application.
3. The Board found that Jeff Gehrs was sworn in to testify about the Application. James Fuqua, Esquire, presented the case on behalf of the Applicants and submitted exhibits for the Board to review.
4. The Board found that Mr. Fuqua stated that the Property consists of Lots 17 & 18 in the Bayview Park development. The Property fronts on Assawoman Street and Davis Street is adjacent to the side of the Property.
5. The Board found that Mr. Fuqua stated that there is an existing home on the Property which the Applicants intend to remove and replace with the proposed dwelling.
6. The Board found that Mr. Fuqua stated that the Property has several unique features.
7. The Board found that Mr. Fuqua stated that the east side of the Property measures 141 feet deep along Davis Street and that the west side of the Property measures 100 feet deep. The rear of the Property is adjacent to Assawoman Bay. The Property runs the length of Davis Street.
8. The Board found that Mr. Fuqua stated that the Property is considered a corner lot with two (2) road frontages. The normal side yard setback requirement is ten (10) feet but a corner lot has a setback requirement of fifteen (15) feet. Most other lots have setback requirements of ten (10) feet.
9. The Board found that Mr. Fuqua stated that Davis Street is not a through street and only runs from Assawoman Street to Assawoman Bay.
10. The Board found that Mr. Fuqua stated that Davis Street is effectively a driveway.
11. The Board found that Mr. Fuqua stated that the corner yard setback requirement designed to provide for improved visibility at intersections and the encroachments will have no impact on the visibility along Davis Street.
12. The Board found that Mr. Fuqua stated that the deck is adjacent to the bay so it does not affect other properties.

13. The Board found that Mr. Fuqua stated that a neighboring lot also received a rear yard variance from the setback requirement.
14. The Board found that Mr. Fuqua stated that the deck only goes to the first floor with no side yard or rear yard setback variance needed for the deck.
15. The Board found that Mr. Fuqua stated that the Property is unique in shape and the variance is necessary to enable reasonable use of the Property.
16. The Board found that Mr. Fuqua stated that the proposed dwelling will have a positive effect on property values.
17. The Board found that Mr. Fuqua stated that the situation was not created by the Applicants and that the lot size and shape were not created by the Applicants.
18. The Board found that Mr. Fuqua stated that the variance for the dwelling will not alter the essential character of the neighborhood.
19. The Board found that Mr. Fuqua stated that the minimum setback needed is 5 feet from the corner front yard setback for the dwelling and porch.
20. The Board found Mr. Gehrs affirmed the statements made by Mr. Fuqua as true and correct.
21. The Board found that Mr. Gehrs testified that steps to the home and the HVAC system will be located within the proposed building envelope and will not project farther into the setback areas.
22. The Board found that Mr. Gehrs testified that the dwelling will be 3-4 stories tall but the proposed deck will be a first-floor deck.
23. The Board found that Mr. Gehrs testified that there is a gap of approximately two (2) feet between the property line and the edge of paving of Davis Street.
24. The Board found that no parties appeared in support of or in opposition to the Application.
25. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, which the Board weighed and considered, 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 size and shape. The Property is small and is located adjacent to Assawoman Bay as evidenced by the survey. The Property also has a unique shape due to the angle of the rear property line. As a result of this angle, the east side of the Property is over 40 feet shorter than the west side of the Property. 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 seek to build a dwelling and porch on the lot. The Property is also subject to corner yard setback requirements which further limit the buildable area of 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 unique size and shape and the buildable area thereof is limited due to these conditions. The Applicants seek to build a dwelling and porch of reasonable size but are unable to do so without violating the Sussex County Zoning Code. The Board is convinced that the variance is necessary to enable the reasonable use of the Property as the variance will allow a reasonably sized dwelling and porch to be constructed on the Property. The Board is convinced that the shape and location of the dwelling and porch 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 size and shape of the Property. The lot was created prior to the Applicants' purchase thereof. The unique lot

size and shape 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. The Board is convinced that the exceptional practical difficulty was not created by the Applicants but was created the lot's unique characteristics. The exceptional practical difficulty created by the lot's unique conditions is exacerbated by the corner yard setback requirements which further reduce the building envelope.

- 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 porch will have no effect on the character of the neighborhood. The proposed dwelling appears to be similar in size to other homes in the area and the Board was not convinced that the dwelling and porch would negatively affect property values or the use of the properties along Davis Street. In fact, the opposition presented no expert reports or studies which demonstrate the impact of the home on property values. The opposition expressed concerns about the impact of the encroachment on the visibility in the neighborhood but Davis Street appears to be a lightly traveled road which intersects with Assawoman Street. Based on the evidence and the aerial photographs of the area, it is unlikely that the proposed dwelling would present greater visibility concerns at that intersection more than other dwellings located at that intersection. The Board notes that the photographs presented by the Applicants indicate that the neighboring dwellings are located close to that intersection. Ultimately, the Board was not convinced that the variance for the dwelling and porch would somehow alter the essential character of the neighborhood.
- 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 Applicants have demonstrated that the variance sought will allow the Applicants to construct a reasonably sized dwelling and porch on the Property. The Board is convinced that the Applicants explored other options for the dwelling but were unable to fit the dwelling on the lot.
- f. This approval is for the corner front yard setback variance for the proposed dwelling and porch as the proposed deck is allowed to project up to five (5) feet into the setback areas. The proposed first floor deck does not extend farther than five (5) feet into those areas so no variance is needed for the deck.

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, and Mr. John Mills. No Board Member voted against the Motion to approve the variance application. Mr. Bruce Mears and Mr. Brent Workman 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 March 6, 2018.