

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

**IN RE: LEONARD WRIGHT & KRISTINE GRIFFIN**

**(Case No. 12172)**

A hearing was held after due notice on July 9, 2018. 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 side yard setback for a proposed structure.

Findings of Fact

The Board found that the Applicants are seeking a variance of 4.0 feet from the ten (10) feet side yard setback requirement for a proposed dwelling on the north side, variance of 4.0 feet from the ten (10) feet side yard setback requirement for a proposed porch on the north side, and a variance of 3.0 feet from the ten (10) side yard setback requirement for a proposed dwelling on the south side. This application pertains to certain real property on the east side of E. Stoney Run, approximately 50 feet south of Bluewater Run East (911 Address: None available); said property being identified as Sussex County Tax Map Parcel Number 5-33-19.00-329.00.

1. The Board was given copies of the Application, a survey of the Property dated May 14, 2018, a survey of the Property dated July 3, 2018, 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 one (1) letter of support of the Application and no letters of opposition to the Application.
3. The Board found that Bryan Elliot was sworn in to testify about the Application.
4. The Board found that Mr. Elliot testified that the Property is unique in size and shape. The Property consists of only 0.19 acres and is not square. The lot is also narrow and is located on a lagoon.
5. The Board found that Mr. Elliot testified that the Property cannot otherwise be developed.
6. The Board found that Mr. Elliot testified that the Applicants have minimized the need for the variance. The dwelling will consist of 1,658 square feet of living space and is a reasonably sized home. The Applicants also changed their plans in order to reduce the size of the variances. All steps and HVAC systems for the dwelling will be placed within the building envelope.
7. The Board found that Mr. Elliot testified that this difficulty has not been created by the Applicants but by the uniqueness of the lot.
8. The Board found that Mr. Elliot testified that the variances will not affect the essential character of the neighborhood but rather enhance it.
9. The Board found that Mr. Elliot testified that there would be no building in the drainage easement.
10. The Board found that no parties appeared in support of or in opposition to the Application.
11. 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 size and shape. The Property is quite small and narrow as evidenced by the survey. The Property is only 46.88 feet wide in the rear and consists of 8,210 square feet. 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 construct a dwelling 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 size and the buildable area thereof is limited due to its size and shape. The Applicants seek to construct a home of reasonable size 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 the dwelling to be placed on the Property. The Board is convinced that the shape and location of the dwelling 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 unique lot size and shape resulted in a limited building envelope on the Property and the small and oddly shaped 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 by 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 is a reasonably sized dwelling and only portions of the dwelling will encroach into the setback areas. No evidence was presented that the variances would somehow alter the essential character of the neighborhood.
- 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 place a reasonably sized dwelling on the Property. The Board is convinced that the Applicants tried to fit the dwelling within the building envelope but were constrained by the narrow width of the Property and the small size of the lot. The Board notes that the dwelling is a reasonably sized home consisting of 1,658 square feet and the Applicants redesigned the dwelling to reduce the size of the variances sought.

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

BOARD OF ADJUSTMENT  
OF SUSSEX COUNTY



John Mills  
Chairman

If the use is not established within two (2) years from the date below the application becomes void.

Date September 11, 2018