

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: BRIAN LISIEWSKI & ALICE LISIEWSKI

(Case No. 12180)

A hearing was held after due notice on August 6, 2018. The Board members present were: Mr. Dale Callaway, Ms. Ellen Magee, Mr. Bruce Mears, Mr. John Mills and Mr. Brent Workman.

Nature of the Proceedings

This is an application for variances from the front yard and rear yard setback requirements for a proposed structure.

Findings of Fact

The Board found that the Applicants are seeking a variance of 11 feet from the thirty (30) feet front yard setback for proposed steps. This application pertains to certain real property on the west side of Sussex Road, approximately 456 feet north of the intersection with Kent Road and New Castle Road in Indian River Acres development. (911 Address: 30165 Sussex Road, Dagsboro) said property being identified as Sussex County Tax Map Parcel Number 1-34-7.00-30.00.

1. The Board was given copies of the Application, a revised site plan dated May 8, 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 no correspondence in support of the Application or in opposition to the Application.
3. The Board found that Bryan Elliott was sworn in to testify about the Application. Mr. Elliott submitted a new survey of the Property.
4. The Board found that Mr. Elliott testified that the Property is unique because the lot is narrow and shallow and it is on a canal and in a flood zone.
5. The Board found that Mr. Elliott testified that the Property cannot be otherwise developed due to the unique condition of the lot and the home will have to be raised to meet flood zone requirements.
6. The Board found that Mr. Elliott testified that the variance is needed to enable a reasonable use of the property to allow for front steps leading to the front door.
7. The Board found that Mr. Elliott testified that the exceptional practical difficulty was not created by the property owner and that the variance will not alter the essential character of the neighborhood but will enhance it.
8. The Board found that Mr. Elliott testified that the variance being requested is the minimum to afford relief.
9. The Board found that Mr. Elliott testified that the Property consists of 5,000 square feet.
10. The Board found that Mr. Elliott testified that the garage will be located underneath the house but will have no living space.
11. The Board found that Mr. Elliott testified that the homeowners association expressed concern about the Applicants' initial plans to construct the steps to go straight away from the house so the Applicants changed the plan to address those concerns. The steps will now project only 4 feet into the front yard setback area. The steps will go to the right and will have a landing. The steps will block a garage entrance.
12. The Board found that Paul Reiger was sworn in to testify in support of the Application. Mr. Reiger testified that he supports this request because that the applicant made his building fit on the undersized lot to match the new ordinances.
13. The Board found that one (1) party appeared in support of and no parties in opposition to the Application.

14. 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 failed to meet the standards for granting a variance. The findings below further support the Board's decision to deny the Application.
- a. The Applicants initially sought a variance of eleven (11) feet from the thirty (30) feet front yard setback requirement for a set of steps which project straight away from the house towards Sussex Road. After consultation with their builder and the homeowners association, the Applicant has redesigned the steps so that they turn to the right and project only 2.5 feet into the front yard setback area. Pursuant to §115-182(d), open, unenclosed steps not covered by a roof or canopy and which do not extend above the level of the first floor of the building may extend or project into the front yard setback area not more than five (5) feet. The steps proposed by the Applicants are open and unenclosed and the steps do not extend above the level of the first floor of the house. Notably, the house is raised due to flood zone requirements and a garage with no living space is located underneath the first floor of the home. The proposed steps also project less than five (5) feet into the front yard setback area. As such, the proposed steps comply with the Sussex County Zoning Code and no variance is needed.
 - b. One of the elements for granting a variance is that the Applicants must demonstrate that the Property cannot be developed in strict conformity with the Sussex County Zoning Code and that the variance is necessary to enable the reasonable use of the Property. Since no variance is needed as noted above, the Applicants have failed to meet this element and the variance must be denied.

The Board denied the variance application finding that it failed to meet the standards for granting a variance.

Decision of the Board

Upon motion duly made and seconded, the variance application was denied. The Board Members in favor of the motion to deny the Application 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 deny 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 October 2, 2018