

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: KELLY HALES

(Case No. 12211)

A hearing was held after due notice on October 1, 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 side yard setback requirements for existing structures.

Findings of Fact

The Board found that the Applicant is seeking a variance of 8.6 feet from the 17.6 feet average front yard setback requirement for the existing pump house, a variance of 3.6 feet from the 17.6 feet average front yard setback requirement for the existing dwelling, a variance of 8.1 feet from the ten (10) feet side yard setback requirement on the north side of Lot 10 for an existing guesthouse, and a variance of 1.1 feet from the five (5) feet side yard setback requirement on the north side of Lot 11 for an existing shed. This application pertains to certain real property on the west side of East Lagoon Road, approximately 511 feet north of Falling Point Road (911 Address: 30835 & 30843 East Lagoon Road, Dagsboro.) said property being identified as Sussex County Tax Map Parcel Numbers 1-34-6.00-123.00 & 1-34-6.00-124.00.

1. The Board was given copies of the Application, an aerial photograph of the Property, a survey of the Property dated September 2, 2016, a survey of the Property dated July 31, 2018, and a portion of the tax map of the area.
2. The Board found that the Property consists of 2 parcels. Sussex County Tax Map Parcel No. 1-34-6.00-123.00 contains Lots 9 and 10 and Sussex County Tax Map Parcel No. 1-34-6.00-124.00 contains Lot 11 (collectively "the Property").
3. The Board found that the Office of Planning & Zoning received no correspondence in support of or in opposition to the Application.
4. The Board found that Kelly Hales was sworn in to testify about the Application. Ms. Hales submitted exhibits to the Board to review.
5. The Board found that Ms. Hales testified that the Property is in Dogwood Acres and consists of three lots each measuring 50 feet wide. Neighboring homes are located close to the road.
6. The Board found that Ms. Hales testified that Planning & Zoning approved the proposed location of the home and the location was staked out. She hired a contractor for the dwelling and the contractor pulled the stakes prior to placing the dwelling. The builder did not place the home in compliance with the stakes. She has since sued the builder.
7. The Board found that Ms. Hales testified that the Property is unique because it is in a flood zone. The Property slopes towards the rear yard.
8. The Board found that Ms. Hales testified that the Property has a water pumphouse.
9. The Board found that Ms. Hales testified that she wants to keep the home where it sits. The house is parallel to the retaining wall but not the front yard.
10. The Board found that Ms. Hales testified that the Property cannot be otherwise developed as the home is already in place.
11. The Board found that Ms. Hales testified that the need for the variances was not created by the Applicant but by the builder who placed the home in the wrong location.

12. The Board found that Ms. Hales testified that the variances will not alter the character of the neighborhood as other homes in the area also sit close to the front of the Property.
13. The Board found that Ms. Hales testified that the septic system is located in front of the guest house and the drain field is located where the shed is located.
14. The Board found that Ms. Hales testified that the only improvement that she has made is placing the house on the lot.
15. The Board found that Ms. Hales testified that this variance request is the least variance to allow for the home to remain in the current location.
16. The Board found that no parties appeared in support of or in opposition to the Application.
17. The Board tabled the Application until October 15, 2018, at which time the Board voted on 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 weighed and considered, the Board determined that the application for the variances for the pumphouse, shed, and guesthouse met the standards for granting a variance. The findings below further support the Board's decision to approve the Application for the variances for those structures.
 - a. The Property is unique due to its size and shape. The Property, though consisting of 3 lots, is wide but not deep. Furthermore, a significant portion of the rear yard is considered to be in the flood zone. The Applicant testified that the Property slopes towards the rear yard. These unique characteristics of this Property limit the buildable area available to the Applicant and have created an exceptional practical difficulty for the Applicant who seeks to retain existing structures 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, shape, and physical conditions. The Applicant seeks to retain an existing pump house, shed, and guest house on the lot but is 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 reasonably sized, existing pump house, shed, and guest house to remain on the lot. The Board is convinced that the shape and location of these structures are also reasonable, which is confirmed when reviewing the survey provided by the Applicant.
 - c. The exceptional practical difficulty was not created by the Applicant. The Applicant did not create the unusual size, shape, and physical conditions of the Property. These conditions have resulted in a limited building envelope on the Property and the small building envelope has created the exceptional practical difficulty. The difficulty caused by the small size of the lot is exacerbated due to the fact that a portion of the rear yard is located in a flood zone. 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 Applicant but was created by the lot's unique characteristics. The Board also notes that the shed, pumphouse, and guesthouse were located on the Property by a prior owner and appear to have been located on the Property for many years.
 - 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 existing pump house, shed, and guest house will have no effect on the character of the neighborhood. These structures have been

on the Property for quite some time without noted complaints in the record. No evidence was presented that the variances would somehow alter the essential character of the neighborhood. The lack of evidence is telling since, if these structures had somehow altered the essential character of the neighborhood, the Board would expect some evidence thereof. The Board also notes that the variance for the guesthouse is likely unnoticeable since the guesthouse is located near the center of the Property but close to the lot line separating Lots 10 and 11 and all three lots are essentially treated as one collective property.

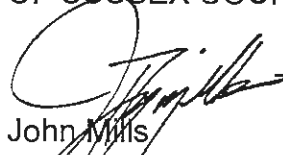
- e. The variances sought are the minimum variances necessary to afford relief and the variances requested represent the least modifications possible of the regulations at issue. The Applicant has demonstrated that the variances sought will allow the Applicant to retain existing pump house, shed, and guest house. No additions or modifications to those structures are proposed.
19. 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 for the variance for the dwelling failed to meet the standards for granting a variance. The findings below further support the Board's decision to deny the Application for the variance for that structure.
- a. The Applicant failed to prove that the dwelling could not be built in strict conformity with the Sussex County Zoning Code. The dwelling was only recently located on the Property and there was no evidence that the Applicant could not move the home into compliance. Rather, the Applicant testified that the dwelling could fit within the building envelope. For these reasons, the Board finds that the dwelling could be developed in strict conformity with the Code and that the variance is not necessary to enable reasonable use of the Property.
 - b. Prior to placing the dwelling on the lot, the Applicant was aware of the front yard setback requirement for a new dwelling. Notably, the front yard setback requirement is lesser than normal for lots because the Applicant benefited from the averaging of other lots in the neighborhood. Despite this reduced setback and clear evidence as to the front yard setback requirement, the Applicant contracted for the placement of the home and the home was placed in the front yard setback area. While the Applicant claims that this was due to builder error, the Applicant did not convince the Board that this error was unavoidable or that the mistake could not be remedied. The exceptional practical difficulty with regard to the dwelling appears to have nothing to do with some unique physical characteristic of the Property and, instead, appears to be created by the Applicant or her agents.
 - c. The Applicant also failed to convince the Board that the variance for the dwelling is the minimum variance necessary to afford relief. As noted in Paragraph 19(a) above, the Applicant could place the dwelling in compliance with the Code. As such, the variance for the dwelling is not the minimum variance necessary to afford relief.

The Board approved the variance application for the shed, pumphouse, and guesthouse finding that it met the standards for granting a variance but the Board denied the variance application for the dwelling 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 approved in part and denied in part. The Board Members in favor of the motion to approve in part and deny in part were Mr. Dale Callaway, Mr. Bruce Mears, and Mr. John Mills. Ms. Ellen Magee and Mr. Brent Workman voted against the Motion to approve the variance application for the shed, pumphouse, and guesthouse but to deny the application for the dwelling.

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 December 18, 2018