

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: DEAN PITMON

(Case No. 12334)

A hearing was held after due notice on July 15, 2019. The Board members present were: Dr. Kevin Carson, Mr. Jeffrey Chorman, Ms. Ellen Magee, Mr. John Williamson, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for a variance from the front yard and side yard setback requirements for proposed and existing structures.

Findings of Fact

The Board found that the Applicant is requesting the following variances: 1) a variance of 8.7 feet from the forty (40) feet front yard setback requirement for an existing dwelling; 2) a variance of 13.7 feet from the forty (40) feet front yard setback requirement for a proposed deck and ramp; and 3) a variance of 5.4 feet from the ten (10) feet side yard setback requirement on the west side for an existing dwelling. This property located on the south side of White Deer Road approximately 154 feet east of Susan Beach Road (911 Address: 6034 White Deer Road, Delmar); said property being identified as Sussex County Tax Map Parcel Number 5-32-11.00-33.10. After a public hearing, the Board made the following findings of fact.

1. The Board was given copies of the Application, a proposed site plan of the Property dated May 22, 2019, property record information, a Certificate of Compliance, Minutes for Case No. 5987, an application for a manufactured home placement, 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 or in opposition to the Application.
3. The Board found that Dean Pitmon was sworn in to give testimony.
4. The Board found that Mr. Pitmon testified that he plans to build a second floor addition and a sunroom in the rear of the dwelling which do not require variances and a handicapped ramp in the front of the home which will require a variance.
5. The Board found that Mr. Pitmon testified that variances were granted in 1996 but no survey was obtained at that time.
6. The Board found that Mr. Pitmon testified that the Property measures 100 feet wide by 150 feet deep.
7. The Board found that Mr. Pitmon testified that the Property cannot otherwise be developed for a handicapped ramp due to the lot size, and the location of the septic system and other improvements.
8. The Board found that Mr. Pitmon testified that the septic system is located to the east of the pool.
9. The Board found that Mr. Pitmon testified that the need for the variances was not created by the Applicant but by the company who placed the modular home there in 1987, hence the original variances.
10. The Board found that Mr. Pitmon testified that the variances will not affect the residential feel and function of the neighborhood.
11. The Board found that Mr. Pitmon testified that there have been no complaints regarding the house or the setbacks.
12. The Board found that Mr. Pitmon testified that there is approximately 8 feet from the property line to the edge of paving.

13. The Board found that Mr. Pitmon testified that the variances requested are the minimum variance requests to install a wheelchair ramp and decking to access the front entrance of the dwelling.
14. The Board found that two people appeared in support of and no one appeared in opposition to the Application.
15. 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 for the variance 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 as it is a lot developed with a dwelling which has been on the Property for many years. The Applicant previously obtained a variances for the dwelling only to later discover that the home was slightly closer to the front yard and side yard setback requirements. The Property is also improved by a septic system which is located in the building envelope and limits the area where structures can be placed. It is clear to the Board that the lot's unique characteristics and history have created an exceptional practical difficulty for the Applicant who seeks to retain a dwelling and to construct a handicap ramp 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. As noted above, the Property has been developed by a home for many years and the Applicant previously obtained variances for that dwelling only to later discover that it was slightly closer to the property lines than initially thought. The Applicant seeks to retain a dwelling and to construct a handicap ramp 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 the Applicant to retain a dwelling and to construct a handicap ramp on the Property. The Board is convinced that the shape and location of the 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 relied on his builder to place the home on the lot in compliance with the Code only to discover years later of the encroachment. The Property is also limited due to the location of the septic system in the building envelope. The Board is convinced that the exceptional practical difficulty was not created by the Applicant but was created the lot's unique characteristics and this situation.
 - 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 structures will have no effect on the character of the neighborhood. The home has been on the Property for many years without complaint and the proposed handicap ramp will afford reasonable access to the home. While the structures encroach into the front yard, there is approximately 8 feet from the front property line to the edge of paving of the adjacent road so the encroachment is likely not as noticeable. 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.
 - 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 a dwelling and to construct a

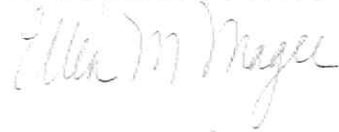
handicap ramp on the Property. The dwelling will not encroach any farther into the setback areas than it has in the past.

The Board granted the variance application finding that the variance application 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 of the motion to approve were Dr. Kevin Carson, Mr. Jeffrey Chorman, Ms. Ellen Magee, Mr. John Williamson, and Mr. Brent Workman. No Board Member voted against the Motion to approve the variance application.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY



Ellen M. Magee
Chair

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

Date September 10, 2019