

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

**IN RE: JOSEPH T. ELLIS, JR.**

**(Case No. 12693)**

A public hearing was held after due notice on May 16, 2022. The Board members present were: Dr. Kevin Carson, Mr. Jeff Chorman, Mr. John T. Hastings, Mr. Jordan Warfel and Mr. John Williamson.

Nature of the Proceedings

This is an application for a variance from the front yard setback requirement for a proposed structure.

Findings of Fact

The Board found that the Applicant is requesting the following variances:

1. A variance of 8 feet from the thirty (30) feet front yard setback requirement for a proposed dwelling;
2. A variance of 10 feet from the thirty (30) feet front yard setback requirement for a proposed dwelling; and
3. A variance of 9 feet from the thirty (30) feet front yard setback requirement for a proposed dwelling.

This application pertains to certain real property located at the south side of Oak Road within the Keen-Wik Subdivision (911 Address: 37664 Oak Road, Selbyville); said property being identified as Sussex County Tax Map Parcel Number 533-19.12-26.00 ("the Property"). After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, aerial photographs of the Property, a survey of the Property dated June 17, 2020, a site plan for the Property, photographs, and a portion of the tax map of the area.
2. The Board found that the Office of Planning & Zoning received five (5) letters in support of the Application and no correspondence in opposition the Application.
3. The Board found that Joseph Ellis was sworn in to give testimony about the Application.
4. The Board found that Mr. Ellis testified that the existing front of the house is 19.9 feet from the road and that the existing porch supports are 15.9 feet from the front of the road.
5. The Board found that Mr. Ellis testified that the existing home was built on a slab in 1980.
6. The Board found that Mr. Ellis testified that this area of Keen-Wik is prone to flooding from the canal more now than when the existing home was built.
7. The Board found that Mr. Ellis testified that the Property is unique because his rear property line extends out into the canal.
8. The Board found that Mr. Ellis testified that the front of the Property is on a cul-de-sac and the curve of the cul-de-sac reduces the buildable area in the front yard by 10-12 feet.
9. The Board found that Mr. Ellis testified that the lot is also shallow and constrains him with the buildable area.
10. The Board found that Mr. Ellis testified that the other properties on the same side of the street have deeper lots away from the cul-de-sac.

11. The Board found that Mr. Ellis testified that he is not trying to rebuild the whole property but he is trying to preserve some of the back yard.
12. The Board found that Mr. Ellis testified that the current home is about 28 feet deep and the proposed home will be about 32 feet deep with an 8 feet porch in the rear which would leave him with about 15 feet of back yard.
13. The Board found that Mr. Ellis testified that the dimensions of his lot only allow for so many options.
14. The Board found that Mr. Ellis testified that he could place a tiny home on the lot and be in compliance but a tiny home is not practical.
15. The Board found that Mr. Ellis testified that he did not create the exceptional practical difficulty as he did not determine the property lines or place it on a cul-de-sac.
16. The Board found that Mr. Ellis testified that the neighbors on each side and across the street from him are in support of the request.
17. The Board found that Mr. Ellis testified that the proposed home may either have a crawl space or possibly be elevated to have a first floor garage in an attempt to maximize space.
18. The Board found that Mr. Ellis testified that the rear and front yard are both of lower elevation.
19. The Board found that Mr. Ellis testified that the proposed house will consist of about 2,750 square feet.
20. The Board found that Mr. Ellis testified that he is trying to be more in compliance than the existing home but not be in the canal.
21. The Board found that Mr. Ellis testified that he gets flooding from the front and rear yard.
22. The Board found that Mr. Ellis testified that this includes all steps and accessories to the home in the building envelope.
23. The Board found that Mr. Ellis testified that there is a bulkhead at the rear of the Property and that the Property backs up to the marsh.
24. The Board found that Mr. Ellis testified that he does not need homeowner association approval and the community is in the process of changing regulations to their covenants to match the County setback requirement.
25. The Board found that no one appeared in support of or in opposition to the Application.
26. 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 as it is a shallow lot with an odd shape with a portion of the rear yard in the lagoon. The lot is wider than it is deep but a significant portion of the rear of the lot is considered part of a lagoon and other portions of the rear yard flood. As a result, the building envelope is limited and restricts how the Applicant can reasonably develop the Property; particularly since the front yard property line is curved. It is clear to the Board that the lot's unique characteristics have created an unnecessary hardship and exceptional practical difficulty for the Applicant who seeks to construct a new dwelling with steps.
  - b. The unnecessary hardship and exceptional practical difficulty are not being created by the provisions of the Sussex County Zoning Code.
  - c. Due to the uniqueness of the lot, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property has limited depth which is further limited by curvature of the front yard and the flooding in the rear yard. The Applicant seeks to construct a reasonably sized

dwelling with steps on the Property 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 construct the dwelling and steps on the Property. 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.

- d. The exceptional practical difficulty and unnecessary hardship were not created by the Applicant. The Applicant did not create the lot or enact the setback requirements which have limited the building envelope of the lot. The Applicant also create the lot's flooding problems. The unique characteristics of the Property are clear when reviewing the survey. The Board is convinced that the unnecessary hardship and exceptional practical difficulty were not created by the Applicant but were created the lot's unique characteristics.
- e. 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 proposed dwelling and steps will have no effect on the character of the neighborhood. The new dwelling will be located a similar location as a prior dwelling and there were no complaints in the record about the existing house. 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. Rather, the Board received evidence of support from neighbors.
- f. The variances sought are the minimum variances necessary to afford relief and the variances requested represent the least modifications possible of the regulation at issue. The Applicant has demonstrated that the variances sought will allow the Applicant to construct a reasonable dwelling and steps on the lot. The variances will allow the Applicant to construct the dwelling away from the flooding areas to the rear of the lot while also keeping the house in a location similar to the existing home on the lot that will be removed.
- g. The condition or situation of the Property and the intended use of the Property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the Sussex County Zoning Code.

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 Dr. Kevin Carson, Mr. Jeffrey Chorman, Mr. Travis Hastings, Mr. Jordan Warfel, and Mr. John Williamson. No Board Member voted against the motion to approve the Application.

BOARD OF ADJUSTMENT  
OF SUSSEX COUNTY



John Williamson  
Chair

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

Date July 18, 2022