

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: ELISABETH MCALLISTER

(Case No. 12720)

A public hearing was held after due notice on July 18, 2022. The Board members present were: Dr. Kevin Carson, Mr. Jeffrey Chorman, Mr. John T. Hastings, Mr. Jordan Warfel, and Mr. John Williamson.

Nature of the Proceedings

This is an application for variances from the front yard setback requirement for proposed structures.

Findings of Fact

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

1. A variance of 5 feet from the thirty (30) feet front yard setback requirement for a proposed dwelling and porch; and
2. A variance of 1.5 feet from the thirty (30) feet front yard setback requirement for a proposed dwelling and porch.

This application pertains to certain real property located on the west side of Keenwik Road within the Keen-Wik Subdivision (911 Address: N/A); said property being identified as Sussex County Tax Map Parcel Number 533-20.13-33.00 ("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 site plan of the Property dated May 5, 2022, schematics of the proposed house, a notice from Keen-Wik on the Bay, 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 Elizabeth McAllister was sworn in to give testimony about the Application.
4. The Board found that Ms. McAllister testified that she purchased the Property 2 years ago and that the lot measures 50 feet wide by 100 feet deep and is located in the Keen-Wik by the Bay development, which is oldest of the Keen-Wik communities.
5. The Board found that Ms. McAllister testified that she went to Beracah Homes to pick out a one-story house and that she picked the second smallest model home offered out of the 54 available models. She stated that the proposed home will consist of about 1,400 square feet. She noted that she has worked with the homeowners association and Beracah Homes to shave off a foot here and there to make the need for variances as small as possible. She believes that she has taken a lot of steps to make this design work.
6. The Board found that Ms. McAllister testified that her request matches the homeowner association requirements but she will need a variance from the homeowner association's rear yard setback as that setback requirement is 20 feet and does not match the Sussex County rear yard setback requirement.
7. The Board found that Ms. McAllister testified that there will be a small porch off the front of the dwelling with steps going to the side rather than the front.
8. The Board found that Ms. McAllister testified that the house will be on 5-6 feet of a cinderblock foundation and there will be no parking underneath the home.

9. The Board found that Ms. McAllister testified that the driveway is to the left of the dwelling from the road.
10. The Board found that Ms. McAllister testified that she may place a portion of walkway in front of the house.
11. The Board found that Ms. McAllister testified that she was over at Cape Windsor recently and she finds that community not as attractive with the homes placed right up to the road.
12. The Board found that Ms. McAllister testified that there is a wood fence at the front property line that will be removed. She noted that there is a grassy area between her fence and the road.
13. The Board found that Ms. McAllister testified that that she reduced the size of the porch.
14. The Board found that Ms. McAllister testified that she does not walk well on grass and needs hard surfaces to be around her dwelling and the entire area behind the home up to the water will be flat decking.
15. The Board found that Ms. McAllister testified that the alley will be made of asphalt and will be necessary for her to operate on the Property.
16. The Board found that Ms. McAllister testified that she also is placing the driveway to the rear of the Property to accommodate additional parking and closer access to the Property.
17. The Board found that Ms. McAllister testified that she may have to place a ramp on the dwelling in the future though it is a last resort. She prospectively would place the ramp at the front of the house if needed.
18. The Board found that Ms. McAllister testified that there will be stairs off the rear porch to the side.
19. The Board found that Ms. McAllister testified that, by raising the house to accommodate the flood zone, she now has to deal with stairs that she did not want. She noted that the stairs will be short rises so that they are more comfortable for her.
20. The Board found that Ms. McAllister testified that, in order to build in compliance with County Code and homeowner association restrictions, she would end up with a buildable area of 50 feet from the front to the back of the Property.
21. The Board found that Ms. McAllister testified that her neighbors one street over have been flooded but their house is at ground level.
22. The Board found that Ms. McAllister testified that the stairs will be in the existing buildable area and will not need a variance.
23. The Board found that Ms. McAllister testified that placing the stairs in a different manner would have created a lot more issues for her aesthetically and functionally.
24. The Board found that Ms. McAllister testified that she agrees with the premise of the larger rear yard setbacks required by the homeowners association because she would not want to impede someone else's views and property.
25. The Board found that no one appeared in support of and no one appeared 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 due to its size, topography, and homeowner association requirements. The lot consists of 5,000 square feet and is adjacent to a lagoon. The Property is in a flood zone so the house must be elevated thereby requiring additional steps to the home. The Applicant has some ambulatory issues and has designed a home to allow her to have first-floor living as she ages in place. The unique characteristics of this Property have created a limited building envelope and have created an unnecessary

hardship and exceptional practical difficulty for the Applicant who seeks to build a reasonable home and porch on the site. The Board notes that the building envelope was further limited by the restrictive covenants from the homeowners association that require a larger setback in the rear yard than is required by the Sussex County Zoning Code.

- 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 unique physical characteristics and the buildable area thereof is limited due to those characteristics. The Applicant seeks to place a home and porch 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 this reasonably sized home and porch to be placed 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. The Board notes that the home is small and the Applicant appears to have taken steps to minimize the need for the variances. Notably, she has chosen a small model of the homes offered by Beracah Homes and has taken additional steps to reduce its size. The Board also notes that the Applicant has ambulatory issues that created design issues as well.
- d. The unnecessary hardship and exceptional practical difficulty were not created by the Applicant. As previously stated, the Property has unique conditions and these conditions have resulted in a limited building envelope on the Property. These conditions have created the unnecessary hardship and exceptional practical difficulty.
- 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 structures will have no effect on the character of the neighborhood. No substantial evidence that the structures would somehow alter the essential character of the neighborhood was presented to the Board. The home is a modest-sized home and appears, based on the testimony, consistent with the neighborhood. There is also a gap between the edge of paving of Keen Wik Road and the front property line thereby minimizing the impact of the front yard encroachment. The Board also notes that there appears to be a requirement that the homeowners association approve the proposal thereby offering neighbors and the community an opportunity to weigh in on this proposal using the community's own standards.
- 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 place the reasonably sized home and porch on the Property. The Board is convinced that the Applicant explored other options for the size, shape, and location of the structures but was constrained by the conditions of the lot. The proposed placement will also allow the Applicant to have reasonable access to the home while limiting encroachments into the homeowner association rear yard setback requirements.
- 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. Travis Hastings, and Mr. Jordan Warfel. Mr. Jeffrey Chorman and Mr. John Williamson voted against the motion to approve the Application.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY



Jeffrey Chorman
Chair

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

Date September 12, 2022.