

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

**IN RE: TIMOTHY L. HUTCHINS & TINA L. HUTCHINS**

**(Case No. 11418)**

A hearing was held after due notice on July 21, 2014. The Board members present were: Mr. Dale Callaway, Mr. Jeff Hudson, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for a variance from the front yard, rear yard, and side yard setback requirements.

Findings of Fact

The Board found that the Applicants were seeking a variance a variance of 4.2 feet from the ten (10) feet front yard setback requirement for an existing dwelling, a variance of 0.4 feet from the ten (10) feet south side yard setback requirement for existing steps, a variance of 2.4 feet from the ten (10) feet south side yard setback requirement for a detached shed, a variance of 5.2 feet from the ten (10) feet north side yard setback requirement for an existing ground level deck, a variance of 4.2 feet from the ten (10) feet south side yard setback requirement for an existing deck, a variance of 4.2 feet from the ten (10) feet north side yard setback requirement for an existing porch, a variance of 3.3 feet from the five (5) feet north side yard setback requirement for an existing detached shed, a variance of 9.8 feet from the ten (10) feet north side yard setback requirement for an existing set of steps, a variance of 4.5 feet from the ten (10) feet north side yard setback requirement for an existing dwelling, and a variance of 4.2 feet from the ten (10) feet rear yard setback requirement for a dwelling. The Applicants have requested that the aforementioned requested variances be granted as they pertain to certain real property located north of Route 54 (Lighthouse Road) and being southeast of Pintail Drive, 300 feet northeast of Swann Drive and being Lot 7 Block I Section B within Swann Keys Subdivision. (911 Address: 36492 Pintail Drive, Selbyville, Delaware); said property being identified as Sussex County Tax Map Parcel Number 5-33-12.16-61.00. After a hearing, the Board made the following findings of fact:

1. The Board found that the Office of Planning & Zoning received three (3) letters in support of the Application and no correspondence in opposition to the Application.
2. Raymond Tomasetti, Esquire, was sworn in to testify on behalf of the Application. Richard Gull, Esquire, was also present on behalf of the Application.
3. The Board found that Mr. Tomasetti submitted pictures for the Board to review.
4. The Board found that Mr. Tomasetti testified that the dwelling was placed on the Property in July 1989 by a prior owner.
5. The Board found that Mr. Tomasetti testified that two (2) years later the Property was sold.
6. The Board found that Mr. Tomasetti testified that the Applicants purchased the Property in November 2004.
7. The Board found that Mr. Tomasetti testified that the Applicants were unaware of any encroachments at the time of purchase.
8. The Board found that Mr. Tomasetti testified that the Applicants purchased the Property with cash and were not required to obtain a survey at that time.
9. The Board found that Mr. Tomasetti testified that the Applicants are now selling the Property and the survey completed for settlement showed the encroachments.
10. The Board found that Mr. Tomasetti testified that the Applicants did not make any changes to the Property since ownership in 2004.

11. The Board found that Mr. Tomasetti testified that there is no record of building permits for the improvements other than the dwelling.
12. The Board found that Mr. Tomasetti testified that the other improvements were made between 1991 and 2004.
13. The Board found that Mr. Tomasetti testified that the neighbor's shed is very close to the property line.
14. The Board found that Planning & Zoning Director Lawrence Lank advised the Board that the rear yard variance for the existing dwelling as noted on the Application is not necessary because the Property extends into the lagoon and that the variance from the north side yard setback requirement for a deck is not necessary.
15. The Board found that Mr. Tomasetti testified that the Applicants made no improvements to the Property and that the improvements existed at the time they purchased the Property.
16. The Board found that Mr. Tomasetti testified that the difficulty was not created by the Applicants.
17. The Board found that Mr. Tomasetti testified that the variances will not alter the essential character of the neighborhood as the improvements have been in their current location for many years.
18. The Board found that Mr. Tomasetti testified that the variances are the minimum variances to afford relief.
19. The Board found that Mr. Tomasetti testified that the lot is unique in size.
20. The Board found that Edward Tribull was sworn in and testified in support of the Application.
21. The Board found that one (1) person appeared in support of the Application.
22. The Board found that no persons appeared in opposition to the Application.
23. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, the Board determined that the Application met the standards for granting a variance. The Property is unique in size and circumstances. A portion of the Property is located in a lagoon and the area of the lot is small. The Property cannot be developed in strict conformity with the Sussex County Zoning Code. The variances are necessary to enable reasonable use of the Property. The difficulty was not created by the Applicants. Prior owners installed the improvements on the Property. The variances will not alter the essential character of the neighborhood. The structures have been on the Property for many years and are part of the character of the neighborhood. The variances sought are the minimum variances necessary to afford relief.
24. The Board denied the request for a variance of 4.2 feet from the ten (10) feet south side yard setback requirement for an existing deck and the request for a variance of 4.2 feet from the ten (10) feet rear yard setback requirement for a dwelling because those variances were not needed in order for the structures to comply with the Sussex County Zoning Code.

The Board approved the variance application in part finding that it met the standards for granting a variance. The Board denied the request for two variances sought by the Applicants.

Decision of the Board

Upon motion duly made and seconded, the Application was approved in part and denied in part. The Board Members voting to approve the Application in part and to deny the Application in part were Mr. Dale Callaway, Mr. Jeff Hudson, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman. No Member voted against the Motion to Approve the Application in part and to Deny the Application in part.

BOARD OF ADJUSTMENT  
OF SUSSEX COUNTY

Dale Callaway  
Chairman

If the use is not established within one (1)  
year from the date below the application  
becomes void.

Date September 9, 2014.