

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: PATRICIA A. STAHL

(Case No. 11525)

A hearing was held after due notice on February 16, 2015. The Board members present were: Mr. Dale Callaway, Mr. Jeff Hudson, Mr. John Mills, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for variances from the side yard setback requirement.

Findings of Fact

The Board found that the Applicant was seeking a variance of 3.1 feet from the ten (10) feet side yard setback requirement for an existing dwelling, a variance of three (3) feet from the five (5) feet side yard setback requirement for an existing shed, a variance of 6.8 feet from the ten (10) feet side yard setback requirement for an existing dwelling, and a variance of 0.7 feet from the five (5) feet side yard setback requirement for an existing open deck. This application pertains to certain real property located north of Route 54 (Lighthouse Road) and being northwest of Blue Teal Road approximately 1,365 feet northeast of Swann Drive and being Lot 35 Block C within Swann Keys Subdivision (911 Address: 37055 Blue Teal Drive, Selbyville, DE); said property being identified as Sussex County Tax Map Parcel Number 5-33-12.16-436.00.

1. The Board was given copies of the Application, a portion of the tax map of the area, and a survey of the Property dated December 8, 2014.
2. The Board found that the Office of Planning & Zoning did not receive any correspondence regarding the Application.
3. Timothy Meadowcraft was sworn in to testify about the Application and Raymond Tomasetti, Esquire, presented the Application on behalf of the Applicant. Mr. Tomasetti submitted exhibits to the Board to review which included a copy of the survey and pictures of the Property.
4. The Board found that Mr. Tomasetti stated that the previous owners placed the manufactured home on the Property in 1977 and that the porch, shed and deck were added later.
5. The Board found that Mr. Tomasetti stated that the Applicant purchased the Property in 1990 and that all improvements on the Property were located thereon at the time the Applicant purchased the Property. There was not a survey completed in 1990.
6. The Board found that Mr. Tomasetti stated that the Applicant is now selling the Property and a survey completed for settlement showed the encroachments. The Applicant was not previously aware of the encroachments.
7. The Board found that Mr. Tomasetti stated that the Property is unique because it is only forty (40) feet wide and is smaller than other lots in the Swann Keys development. The community was previously developed as a mobile home community.
8. The Board found that Mr. Tomasetti stated that the unique size of the Property creates a difficulty.
9. The Board found that Mr. Tomasetti stated that the Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code.
10. The Board found that Mr. Tomasetti stated that the difficulty was not created by the Applicant and that the original owner placed the encroaching structures on the Property.

11. The Board found that Mr. Tomasetti stated that the variances will not alter the essential character of the neighborhood and that the use is not detrimental to the public welfare.
12. The Board found that Mr. Tomasetti stated that the variances are the minimum variances necessary to afford relief and that the variances represent the least modification of the regulations at issue.
13. The Board found that Mr. Tomasetti stated that the new owners do not plan to make any changes to the Property.
14. The Board found that Mr. Meadowcraft confirmed the statements made by Mr. Tomasetti as being true and correct.
15. The Board found that no parties appeared in support of or in opposition to the Application.
16. 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 small size and narrow width. The Property is only forty (40) feet wide, which is very narrow. Other lots within the Swann Keys community are wider than this lot. The unique characteristics of this Property have created an exceptional practical difficulty for the Applicant.
 - b. Due to the unique shape of the lot, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Applicant seeks to leave the existing improvements on the Property in their current locations but is unable to do so without violating the Sussex County Zoning Code because the Property is so narrow. The Board is convinced that the size of the improvements is reasonable and that the variances are necessary to enable the reasonable use of the Property as the variances will allow the existing structures to remain on the Property. The survey attached to the Application confirms that the improvements are reasonable in size and shape.
 - c. The exceptional practical difficulty was not created by the Applicant. The Applicant purchased the Property in 1990 and the improvements were already on the Property at that time. Those improvements were placed on the Property by a prior owner so the Applicant did not create the encroachments. Furthermore, the narrowness of the lot has also created an exceptional practical difficulty for the Applicant because it creates a very narrow and small buildable area. The unique characteristics of the Property are clear when reviewing the survey. Neither the size of the lot or the encroaching improvements were created by the Applicant.
 - 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 Applicant was unaware of the encroachments at the time she purchased the Property and only became aware of the encroachments recently. The un rebutted evidence demonstrates that these structures have been in their present locations since at least 1990. No evidence was presented which would indicate that the improvements have somehow altered the essential character of the neighborhood or have been 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 the

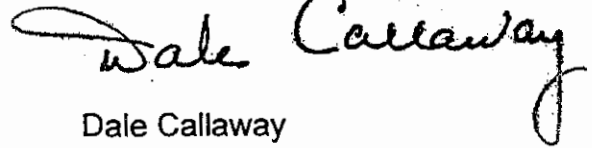
variances will allow the existing improvements to remain in their current locations and that no additional variance for an addition or expansion of those structures is sought.

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 Mr. Dale Callaway, Mr. Jeff Hudson, Mr. John Mills, and Mr. Brent Workman. No Board Members voted against the Motion to approve the variance application.

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

April 7, 2015