

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

**IN RE: LOWELL DUTCHER and DEBORAH DUTCHER**

**(Case No. 11529)**

A hearing was held after due notice on February 16, 2015. The Board members present were: Mr. Dale Callaway, Mr. Jeff Hudson, 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 Applicants were seeking a variance of five (5) feet from the ten (10) feet side yard setback requirement for both sides of the property for a proposed dwelling and a variance of 7.6 feet from the ten (10) feet side yard setback requirement for a proposed HVAC unit on the north side of the Property. This application pertains to certain real property located north of Route 54 (Lighthouse Road) and being southeast of Laws Point Road approximately 1,300 feet northeast of Swann Drive and being Lot 32 Block F within Swann Keys Subdivision (911 Address: 36984 Laws Point Road, Selbyville, DE); said property being identified as Sussex County Tax Map Parcel Number 5-33-12.16-299.00.

1. The Board was given copies of the Application, a portion of the tax map, and a survey of the Property dated June 2, 2014.
2. The Board found that the Office of Planning & Zoning received one (1) letter in opposition to the Application.
3. Lowell Dutcher was sworn in to testify about the Application.
4. The Board found that Mr. Dutcher testified that the existing 1984 manufactured home, sunroom, decks and shed existed on the Property when he purchased the Property in June 2014. Those structures are located in the setback areas and he plans to remove the existing structures and build a modular dwelling on the Property. The existing dwelling needs to be replaced.
5. The Board found that Mr. Dutcher testified that the lot is only forty (40) feet wide but a lot across the street is fifty (50) feet wide. Other lots in the neighborhood are also fifty (50) feet wide.
6. The Board found that Mr. Dutcher testified that others in the community are improving their units as well.
7. The Board found that Mr. Dutcher testified that the building footprint of the proposed dwelling encroaches less into the setback areas than the existing structures. Meanwhile, the HVAC system will not encroach any farther than the existing shed.
8. The Board found that Mr. Dutcher testified that the proposed dwelling will be thirty (30) feet wide. He could build the proposed home without a variance if the lot was fifty (50) feet wide.
9. The Board found that Mr. Dutcher testified that he works for the company that builds the modular dwelling he plans to place on the Property and that a smaller dwelling is not available.
10. The Board found that Mr. Dutcher testified that home will be a Cape Code style house. Larger two (2) story homes are being placed in the neighborhood.
11. The Board found that Mr. Dutcher testified that the neighbor's propane tank is five (5) feet from the property line.
12. The Board found that no parties appeared in support of or in opposition to the Application.

13. 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 findings below further support the Board's decision to approve the Application.
- a. The Board found the testimony presented by the Applicant to be credible and persuasive.
  - b. The Property is unique due to its narrow width, which greatly limits the buildable area. The narrowness is apparent when reviewing the survey. The unique characteristics of this Property have created an exceptional practical difficulty for the Applicants.
  - c. Due to the uniqueness of the lot, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The existing dwelling encroaches into the front and side yard setback areas and needs to be replaced. The Applicants seek to remove the existing dwelling and structures and replace them with a thirty (30) feet wide modular home. The Applicants, however, are unable to do so without violating the Sussex County Zoning Code because the lot is narrow. The Applicants only recently purchased the Property and did not create its narrow shape. The Board is convinced that the proposed dwelling and HVAC system are reasonable in shape, size, and location. The survey confirms that the proposed use is reasonable.
  - d. The exceptional practical difficulty was not created by the Applicants. The Applicant did not create the shape of the Property which has severely limited the buildable area. The unique characteristics of the Property are clear when reviewing the survey. The existing home also needs to be replaced.
  - 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 variances will allow the Applicants to build a new dwelling and HVAC unit which should be an improvement over the existing structures. The new structures will also encroach less into the setback areas than the current structures. The testimony and evidence confirm that other manufactured homes in the development are being replaced by newer, larger homes and that the proposed dwelling will be consistent with the character of the neighborhood. The Board was not convinced by the letter from a neighbor that the variance would somehow alter the essential character of the neighborhood or be detrimental to the public welfare.
  - f. 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 Applicants have demonstrated the variances will allow the proposed dwelling and HVAC system to be placed on the Property.

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, 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.