

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: PEGGI ANNE LANDIS

(Case No. 11598)

A hearing was held after due notice on July 6, 2015. 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 variances from the side yard setback requirement.

Findings of Fact

The Board found that the Applicant is seeking a variance of 3.9 feet from the ten (10) feet side yard setback requirement on the north side for a proposed covered landing, a variance of 8.2 feet from the ten (10) feet side yard setback requirement on the south side for a proposed HVAC unit, and a variance of five (5) feet from the ten (10) feet side yard setback requirement on the south side for a proposed dwelling. This application pertains to certain real property located on the southeast side of Canvasback Road 0.24 miles north of Swann Drive within the Swann Keys development (911 Address: 37022 Canvasback Road, Selbyville); said property being identified as Sussex County Tax Map Parcel Number 5-33-12.16-390.00.

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 April 8, 2015.
2. The Board found that the Office of Planning & Zoning received had not received any correspondence regarding the Application.
3. Peggi Landis was sworn in to testify about the Application. James Fuqua, Esquire, presented the case on behalf of the Applicants and submitted exhibits to the Board to review including copies of the survey, the schematics for the dwelling, and a portion of the tax map.
4. The Board found that Mr. Fuqua stated that the Property is located within Swann Keys. The Property has an existing single-wide manufactured home which will be removed.
5. The Board found that Mr. Fuqua stated that the Property borders a lagoon in the rear. The lot measures 40 feet by 104 feet and contains 4,158 square-feet of area.
6. The Board found that Mr. Fuqua stated Swann Keys is an older community originally designed as a manufactured home park and has evolved to a year-around community which is replacing single-wide units with larger dwellings.
7. The Board found that Mr. Fuqua stated the proposed dwelling will measure 24.4 feet wide by 61 feet long with a deck and sunroom along the lagoon.
8. The Board found that Mr. Fuqua stated the Property is unique because it is small and narrow.
9. The Board found that Mr. Fuqua stated the variances will enable reasonable use of the Property.
10. The Board found that Mr. Fuqua stated the difficulty was not created by the Applicant. The lot size has not been changed since it was originally created.
11. The Board found that Mr. Fuqua stated that the proposed dwelling is in character with the neighborhood.
12. The Board found that Mr. Fuqua stated the dwelling will be an upgrade to the area and will improve property values.

13. The Board found that Mr. Fuqua stated the variances requested are similar to other variances previously granted in the development. There have been numerous variances granted in the area.
14. The Board found that Mr. Fuqua stated the variances requested are the minimum variances to afford relief.
15. The Board found that Ms. Landis, under oath, confirmed the statements made by Mr. Fuqua.
16. The Board found that Ms. Landis testified that the placement of the HVAC system is consistent with the location of HVAC systems on other properties in the neighborhood.
17. The Board found that no parties appeared in support of or in opposition to the Application.
18. 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 unique size. The Property is quite narrow and small as evidenced by the survey and is located adjacent to a lagoon. The unique characteristics of this Property limit the buildable area available to the Applicant and have created an exceptional practical difficulty for the Applicant.
 - b. Due to the uniqueness of the lot, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property has a unique size and the buildable area thereof is limited due to its size and narrowness. The Applicant seeks to construct a dwelling of a reasonable size with a covered landing and HVAC system 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 a reasonably sized dwelling, covered landing, and HVAC system to be constructed on the Property. The Board is convinced that the size, shape, and location of these structures are reasonable, which is confirmed when reviewing the survey and schematics provided by the Applicant.
 - c. The exceptional practical difficulty was not created by the Applicant. The Applicant did not create the unusual size of the Property. The un rebutted testimony confirms that the lot size was created when Swann Keys was originally developed. The unique lot size has resulted in a limited building envelope on the Property and the small building envelope has created the exceptional practical difficulty. The unique characteristics of the Property are clear when reviewing the survey. The Board is convinced that the exceptional practical difficulty was not created by the Applicant but was created by the size of the lot.
 - 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 Board is convinced that the dwelling, covered landing, and HVAC system will have no effect on the character of the neighborhood. Swann Keys was originally developed as a manufactured home community for singlewide homes. The community has since evolved into a community with larger dwellings such as the one proposed by the Applicant and the proposed structures are consistent with structures typically found in a residential community such as Swann Keys. Similar variances have also been granted in the area. 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.

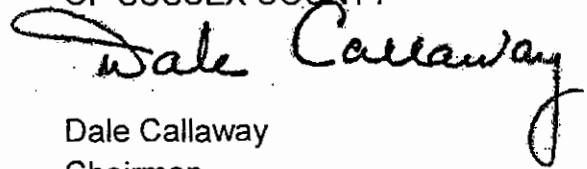
- e. The variances sought are the minimum variances necessary to afford relief and the variances requested represent the least modifications possible of the regulations at issue. The Applicant has demonstrated that the variances sought will allow the Applicant to construct a reasonably sized dwelling, HVAC system, and covered landing 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, Mr. John Mills, Mr. Norman Rickard, 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 August 18, 2015.