

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

**IN RE: JOHN BORN & KIM BORN**

**(Case No. 11606)**

A hearing was held after due notice on July 20, 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 and rear yard setback requirements.

Findings of Fact

The Board found that the Applicants are seeking a variance of 3.7 feet from the ten (10) feet side yard setback requirement for a proposed deck and porch, a variance of 8.3 feet from the ten (10) feet side yard setback requirement for a proposed HVAC unit, a variance of 5 feet from the ten (10) feet side yard setback requirement for a proposed dwelling, a variance of 1.6 feet from the five (5) feet rear yard setback requirement for an existing shed, a variance of 3.7 feet from the five (5) feet side yard setback requirement for an existing shed, a variance of 5.5 feet from the ten (10) feet side yard setback requirement for a proposed landing, and a variance of 1.5 feet from the ten (10) feet side yard setback requirement for a proposed dwelling. This application pertains to certain real property located on the southeast side of Canvasback Road approximately 578 feet north of Swann Drive (911 Address: 36982 Canvasback Road, Selbyville); said property being identified as Sussex County Tax Map Parcel Number 5-33-12.16-408.00.

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 June 1, 2015.
2. The Board found that the Office of Planning & Zoning received had not received any correspondence in support of or in opposition to Application.
3. Kim Born and Adam Rones were sworn in to testify about the Application.
4. The Board found that Mr. Rones testified that the Property is located in Swann Keys. The Property is unique because the community was originally designed as a mobile home park for singlewide mobile homes and has evolved into a community with larger dwellings.
5. The Board found that Mr. Rones testified that the Applicants purchased the Property in 2014 and did not create the lot size.
6. The Board found that Mr. Rones testified that the Applicants plan to replace the existing manufactured home with a two-story dwelling measuring 2,015 square feet.
7. The Board found that Mr. Rones testified that the proposed dwelling is similar to other dwellings in the development and will not alter the essential character of the neighborhood. Other similar variances have also been granted in Swann Keys and along this road.
8. The Board found that Mr. Rones testified that the shed was located on the Property at the time the Applicants purchased the Property. The Applicants intend to keep the shed and the shed cannot be moved into compliance.
9. The Board found that Mr. Rones testified that the HVAC unit is being placed on the same side of the Property as other similar units in the development.
10. The Board found that Mr. Rones testified that the front of the Property will be used for parking. There will be no parking underneath the house.

11. The Board found that Mr. Rones testified that the rear of the dwelling will be in line with other dwellings in the development.
12. The Board found that Mr. Rones testified that the dwelling on the lot to the north of the Property is already developed with a house.
13. The Board found that two (2) parties appeared in support of the Application.
14. The Board found that no parties appeared in opposition to the Application.
15. 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 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 Applicants and have created an exceptional practical difficulty for the Applicants who seek to construct a new home on the lot.
  - 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 setback requirements. The Applicants seek to construct a dwelling of a reasonable size but are 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 with related structures to be constructed on the Property. The Board is convinced that the size, shape, and location of this dwelling and related structures are reasonable, which is confirmed when reviewing the survey provided by the Applicants.
  - c. The exceptional practical difficulty was not created by the Applicants. The Applicants 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. Swann Keys was originally developed as a community for smaller, singlewide manufactured homes but has evolved to a community with larger dwellings. 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 Applicants but was created by the size of the lot and the evolving character of the neighborhood.
  - 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 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 Applicants and the proposed dwelling is 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 Applicants have demonstrated that the variances sought will allow the Applicant to construct a reasonably sized dwelling with related structures on the Property. The Applicants have also convinced the Board that, while the front portion of the Property will not be used for the dwelling and structures, that area is needed to provide for parking on the Property. The Applicants have designed the dwelling to be consistent with the character of the neighborhood while minimizing the need for variances.

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 September 15, 2015.