

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: JAMES R. APPLEBAUM & BRENDA L. APPLEBAUM

(Case No. 11607)

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 setback requirements.

Findings of Fact

The Board found that the Applicants are seeking a variance of 4.5 feet from the five (5) feet side yard setback requirement for an existing shed, a variance of 7.2 feet from the ten (10) feet side yard setback requirement for an existing landing and steps, and a variance of 8 feet from the ten (10) feet side yard setback requirement for an existing HVAC unit. This application pertains to certain real property located on the northwest side of Blue Bill Drive approximately 1125 feet north of Swann Drive (911 Address: 37037 Blue Bill Drive, Selbyville); said property being identified as Sussex County Tax Map Parcel Number 5-33-12.16-165.00.

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 May 8, 2015.
2. The Board found that the Office of Planning & Zoning received one (1) letter in opposition to the Application and had not received any correspondence in support of the Application.
3. James Applebaum was sworn in to testify about the Application. Manaen Robinson, Esquire, presented the case on behalf of the Applicants.
4. The Board found that Mr. Robinson stated that the Applicants purchased the Property on February 16, 2001 and that the improvements already existed on the Property at that time.
5. The Board found that Mr. Robinson stated that the Applicants were unaware of any encroachments at the time of purchase and that a recent survey completed for settlement showed the encroachments.
6. The Board found that Mr. Robinson stated that the narrow fifty (50) feet wide lot is unique in size.
7. The Board found that Mr. Robinson stated that the existing manufactured home was placed on the Property in 1988 in the same location as the previous manufactured home located thereon.
8. The Board found that Mr. Robinson stated that the landing, steps, and shed have been in their current location since at least 2001.
9. The Board found that Mr. Robinson stated that the HVAC was replaced and elevated by the Applicants.
10. The Board found that Mr. Robinson stated that the shed cannot be moved into compliance because it would likely fall over.
11. The Board found that Mr. Robinson stated that the Property cannot otherwise be developed and the variances are necessary to enable reasonable use of the Property.
12. The Board found that Mr. Robinson stated that the need for the variances was not created by the Applicants.
13. The Board found that Mr. Robinson stated that the variances will not alter the character of the neighborhood and the variances do not impair the uses of neighboring and adjacent properties.

14. The Board found that Mr. Robinson stated that the variances are the minimum variances necessary to afford relief.
15. The Board found that Mr. Applebaum, under oath, confirmed the statements made by Mr. Robinson.
16. The Board found that Mr. Applebaum testified that portion of the rear yard is located in the lagoon which limits the buildable area of the Property.
17. The Board found that one (1) party appeared in support of the Application.
18. The Board found that no parties appeared in opposition to the Application.
19. 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 Property is unique due to its unique size. The Property is quite small as evidenced by the survey and a significant portion of the rear yard is located in 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 keep an existing dwelling, shed, steps and HVAC system 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 the fact that a portion of the rear yard is located in the lagoon. The Applicants seek to retain an existing dwelling, shed, steps and HVAC system 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 existing dwelling, shed, steps and HVAC system to remain on the Property. The Board is convinced that the size, shape, and location of the existing dwelling, shed, steps and HVAC system 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 lot size was created when Swann Keys was originally developed. The unique lot size and the location of the Property in the lagoon have 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 Property's unique physical circumstances. The Board also finds that the difficulty was not created by the Applicants as the dwelling, shed, and steps were placed on the Property by a prior owner. The Applicants have not moved those structures. An HVAC system was also located on the Property at the time the Applicants purchased the Property and the Applicants replaced and elevated that HVAC system in a location similar to where the prior HVAC system was located.
 - 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 existing dwelling, shed, steps and HVAC system will have no effect on the character of the neighborhood. The structures have been in their present location for many years. The dwelling was a replacement dwelling for another manufactured home and

was placed on the Property in 1988. The shed and steps have been located on the Property since at least 2001 and the HVAC system has been in its present location for some time and was a replacement for another system previously located on the Property. The Board was not convinced by the opposition that the variances would somehow alter the character of the neighborhood or be detrimental to the public welfare.

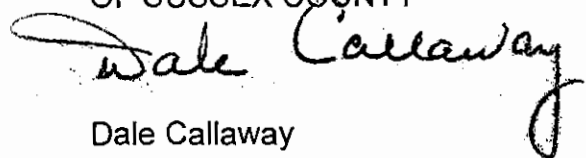
- e. The variances sought are the minimum variances necessary to afford relief and the variances requested represent the least modifications possible of the regulations at issue. The Applicants have demonstrated that the variances sought will allow the Applicant to keep the existing dwelling, shed, steps and HVAC system on the Property. No variances are sought for any new additions to 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 September 15, 2015.