

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: DEBBIE L. RUARK

(Case No. 11614)

A hearing was held after due notice on August 3, 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 front yard setback requirements.

Findings of Fact

The Board found that the Applicant is seeking a variance of 3.3 feet from the ten (10) feet side yard setback requirement for an existing manufactured home, a variance of one (1) foot from the ten (10) feet front yard setback requirement for an existing manufactured home, and a variance of 0.1 feet from the five (5) feet side yard setback requirement for an existing shed. This application pertains to certain real property located on the north side of Blue Bill Drive approximately 1476 feet east of Swann Drive (911 Address: 37063 Blue Bill Drive, 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 and a survey of the Property dated May 7, 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. Bruce Wright was sworn in to testify about the Application.
4. The Board found that Mr. Wright testified that he is the realtor for the Applicants. The Applicants live in a nursing home and are selling the Property. A survey completed for settlement showed the encroachments and the Applicants were unaware of the encroachments.
5. The Board found that Mr. Wright testified that the Applicants purchased the Property in 1990 and the existing structures were on the Property when the Applicants purchased it. The Applicants made no additions to the structures since purchasing the Property.
6. The Board found that Mr. Wright testified that the variances requested are the minimum variances to afford relief.
7. The Board found that Mr. Wright testified that the undersized narrow lot is unique in size.
8. The Board found that Mr. Wright testified that the Property cannot otherwise be developed and that the variances are necessary to enable reasonable use of the Property.
9. The Board found that Mr. Wright testified that the rear yard property line extends into the lagoon.
10. The Board found that Mr. Wright testified that the existing structures are on permanent foundations and cannot be moved into compliance.
11. The Board found that Mr. Wright testified that the exceptional practical difficulty was not created by the Applicants.
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, 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 and a significant portion of the Property is located in a lagoon as evidenced by the survey. The unique characteristics of this Property limit the buildable area available to the Applicant and have created an exceptional practical difficulty for the Applicant who seeks to retain an existing home and shed 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 due to the fact that a significant portion of the Property is located in a lagoon. The Applicant seeks to retain a dwelling and shed of reasonable size 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 and shed to remain on the Property. The dwelling and shed are located on permanent foundations and cannot be moved into compliance either. The Board is convinced that the size, shape, and location of this dwelling and shed are reasonable, which is confirmed when reviewing the survey 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. Swann Keys was originally developed as a community for smaller, singlewide manufactured homes with small lot sizes. 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 effects of the small building envelope were exacerbated by the fact that portions of the lot are located in the lagoon. The unique characteristics of the Property are clear when reviewing the survey. Furthermore, the dwelling and shed were placed on the lot by a prior owner. The Board is convinced that the exceptional practical difficulty was not created by the Applicant but was created the lot's unique characteristics and by the placement of the dwelling and shed by a prior owner.
- 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 and shed will have no effect on the character of the neighborhood. The dwelling and shed have been on the Property since at least 1990 and no complaints were noted in the record about the location of the dwelling and shed. 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 retain a reasonably sized dwelling and shed on the Property. The Applicant does not intend to make any additions to the structures and only seeks the variances to allow the existing structures to remain in their current locations.

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.