

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: KEVIN GAVAGHAN

(Case No. 11633)

A hearing was held after due notice on September 14, 2015. The Board members present were: Mr. Dale Callaway, Mr. Jeff Hudson, and Mr. Norman Rickard.

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 3.5 feet from the ten (10) feet side yard setback requirements on both sides for a proposed dwelling, and a variance of seven (7) feet from the ten (10) feet side yard setback requirement for a proposed set of steps, HVAC, and gas tank. This application pertains to certain real property located on the southeast side of Laws Point Road, approximately 0.52 miles north of Swann Drive (911 Address: 37072 Laws Point Road, Selbyville); said property being identified as Sussex County Tax Map Parcel Number 5-33-12.12-3.00.

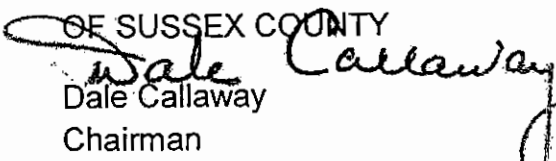
1. The Board was given copies of the Application, a portion of the tax map of the area, a survey dated June 2, 2015, and a site plan dated June 2, 2015.
2. The Board found that the Office of Planning & Zoning had not received any correspondence in support of or in opposition to the Application.
3. The Board found that Bryan Elliot was sworn in to testify about the Application.
4. The Board found that Mr. Elliot testified that the undersized lot is only forty (40) feet wide making it difficult place newer style homes on the Property. The lot is long and very narrow.
5. The Board found that Mr. Elliot testified that the Applicant plans to retire and live on the Property full time.
6. The Board found that Mr. Elliot testified that the community was originally developed for smaller, single-wide mobile homes and has evolved to a community of larger, stick-built homes.
7. The Board found that Mr. Elliot testified that the dwelling will not alter the character as the neighborhood as it will be similar to others in the neighborhood. The proposed dwelling is under 2,000 square feet in size and the proposed dwelling is in keeping with the neighborhood.
8. The Board found that Mr. Elliot testified that the difficulty was not created by the Applicant.
9. The Board found that Mr. Elliot testified that the variances are the minimum necessary to afford relief.
10. The Board found that no parties appeared in support of or in opposition to the Application.
11. 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 shape and size. The Property is very narrow but unusually deep. The uniqueness of the Property has created a limited building envelope for the Applicant in the construction of the dwelling. The Board is convinced that the uniqueness of the Property has 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 shape and the buildable area thereof is limited due to its size and shape. The Applicant seeks to construct a dwelling of a 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 to be placed on the Property. The Board is convinced that the size, shape, and location of this dwelling are reasonable, which is confirmed when reviewing the site plan provided by the Applicant.
- c. The exceptional practical difficulty was not created by the Applicant. The Applicant did not create the unusual size or shape 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 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 the lot's unique characteristics.
- 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. The proposed dwelling is reasonable in size and the unrebutted testimony confirms that there are other similar homes in the neighborhood. Furthermore, 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 and related structures 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. Norman Rickard. No member voted against the Motion to approve the variance application. Mr. John Mills and Mr. Brent Workman were not present and did not participate in the discussion or vote of this 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 October 20, 2015