

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: RYAN NOSIA & JOELLE NOSIA

(Case No. 11645)

A hearing was held after due notice on October 5, 2015. The Board members present were: Mr. Dale Callaway, Mr. Jeff Hudson, Mr. John Mills, 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 Applicants are seeking a variance of 3.5 feet from the ten (10) feet side yard setback requirement for a set of steps on the south side, a variance of 3.8 feet from the ten (10) feet side yard setback requirement for an existing dwelling on the south side, a variance of five (5) feet from the thirty (30) feet front yard setback requirement for a dwelling, and a variance of 0.5 feet from the five (5) feet side yard setback requirement on the north side for an existing shed. This application pertains to certain real property located on the southeast side of Pintail Drive approximately 413 feet north of Swann Drive (911 Address: 36958 Pintail Drive, Selbyville); said property being identified as Sussex County Tax Map Parcel Number 1-34-11.00-80.00 and 1-34-11.00-79.00.

1. The Board was given copies of the Application, a portion of the tax map, and a survey of the Property dated July 2, 2015.
2. The Board found that the Office of Planning & Zoning received one (1) letter in support of the Application and had not received any correspondence in opposition to the Application.
3. Ryan Nosia was sworn in to testify about the Application and Timothy Willard, Esquire, presented the Application.
4. The Board found that Mr. Willard stated that the Applicants purchased the Property in 2009. The Applicants intend to sell the Property but a recent survey showed the encroachments.
5. The Board found that Mr. Willard stated that the Property is located in Swann Keys and is a small lot that measures 50 feet by 110 feet.
6. The Board found that Mr. Willard stated that the existing bulkhead shortens the usable length of the lot to eighty (80) feet.
7. The Board found that Mr. Willard stated that all the improvements existed on the Property in 2009 and the dwelling has been on the lot since 1978.
8. The Board found that Mr. Willard stated that the 4,000 square feet lot is unique in size.
9. The Board found that Mr. Willard stated that the variances will enable reasonable use of the Property.
10. The Board found that Mr. Willard stated that the exceptional practical difficulty was not created by the Applicants.
11. The Board found that Mr. Willard stated that there have been no changes to the Property since the Applicants' purchase in 2009.
12. The Board found that Mr. Willard stated that the variances will not alter the essential character of the neighborhood. The neighbors have no objection to the Application and there have been multiple variances issued in the development.
13. The Board found that Mr. Willard stated that the variances requested are the minimum variances to afford relief.

14. The Board found that Mr. Nosia, under oath, affirmed the statements made by Mr. Willard.
15. The Board found that Mr. Nosia testified that he believes the shed has been on the Property since 1978.
16. The Board found that Mr. Nosia testified that a portion of the rear yard is in the lagoon.
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 small and is located adjacent to a lagoon as evidenced by the survey. The small size of the Property is further exacerbated by the fact that approximately 1,500 square feet of the rear yard is located in the lagoon. The presence of the lagoon greatly limits the usable space of the Property. 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 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. The Applicants seek to retain a dwelling and shed of 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 and shed to remain on the Property. The structures have been in their present locations for many years and likely cannot be moved easily 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 Applicants.
 - c. The exceptional practical difficulty was not created by the Applicants. The Applicants 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 effects of the small building envelope were exacerbated by the fact that portions of the rear yard 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 Property by a prior owner. The Board is convinced that the exceptional practical difficulty was not created by the Applicants but was created the lot's unique characteristics and by the placement of the dwelling and the 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 structures have been on the Property since approximately 1978. Despite the longstanding locations of the shed and a dwelling, no complaints were noted in the record about the location of the dwelling and shed. Similar variances have also been granted 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 Applicants have demonstrated that the variances sought will allow the Applicants to retain a reasonably sized dwelling and shed on the Property. The Applicants do not intend to make any additions to the structures and only seek the variances to allow the existing structures to remain in their current locations.

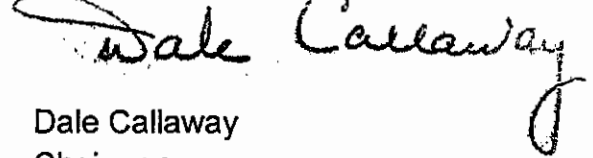
The Board granted the variance application finding that it met the standards for granting a variance.

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, and Mr. Brent Workman. No Board Member voted against the Motion to Approve the Application. Mr. Norman Rickard was 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 November 12, 2015