

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: LISA L. WILLIE & WILLIAM L. WILLIE, JR.

(Case No. 11647)

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 front yard and side yard setback requirements.

Findings of Fact

The Board found that the Applicants are seeking a variance of 7.8 feet from the fifteen (15) feet corner side yard setback requirement for an existing dwelling, a variance of 1.4 feet from the fifteen (15) feet corner side yard setback requirement for an existing porch, a variance of twelve (12) feet from the fifteen (15) feet corner side yard setback requirement for an existing shed, a variance of 3.6 feet from the ten (10) feet side yard setback requirement for an existing dwelling, a variance of 3.2 feet from the five (5) feet side yard setback requirement for a set of steps, and a variance of 2.3 feet from the five (5) feet side yard setback. This application pertains to certain real property located on the southeast corner of Mallard Drive and Swann Drive (911 Address: 37631 Swann Drive, Selbyville); said property being identified as Sussex County Tax Map Parcel Number 5-33-12-16-142.00.

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 12, 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. William Willie, Jr., was sworn in to testify about the Application and Manaen Robinson, Esquire, appeared on behalf of the Applicants.
4. The Board found that Mr. Robinson stated that the Applicants purchased the Property in June 2015.
5. The Board found that Mr. Robinson stated that the Property is located in Swann Keys.
6. The Board found that Mr. Robinson stated that a survey showed the encroachments.
7. The Board found that Mr. Robinson stated that the corner lot is odd in shape.
8. The Board found that Mr. Robinson stated that a large portion of the Property is in the lagoon.
9. The Board found that Mr. Robinson stated that the manufactured home was placed on the Property in 1989.
10. The Board found that Mr. Robinson stated that the Property cannot be otherwise developed in strict conformity with the Sussex County Zoning Code and that the variances are necessary to enable reasonable use of the Property.
11. The Board found that Mr. Robinson stated that the difficulty was not created by the Applicants.
12. The Board found that Mr. Robinson stated that the improvements were located on the Property in their present locations at the time the Applicants acquired the Property.
13. The Board found that Mr. Robinson stated that the variances will not alter the character of the neighborhood.

14. The Board found that Mr. Robinson stated that the variances are the minimum variances to afford relief.
15. The Board found that Mr. Willie, under oath, affirmed the statements made by Mr. Robinson.
16. The Board found that Mr. Willie testified that the manufactured home is on a block foundation.
17. The Board found that Mr. Willie testified that there have been no complaints from the neighbors.
18. The Board found that no parties appeared in support of or 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, 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 and shape. The Property is quite small and is located adjacent to a lagoon as evidenced by the survey. In fact, a significant portion of the yard is located in the lagoon. The Property also has a unique shape as is clearly shown on the survey. This unique shape differs from other lots in Swann Keys which are generally rectangular in shape as shown on the tax map. 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 shape and the buildable area thereof is limited due to its size and shape. The Applicants seek 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 is located on a block foundation and has been on the Property since 1989 and the shed cannot be moved elsewhere on the Property in compliance with the Code 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 located under water. 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 dwelling and shed have been on the Property for many years. 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. 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 variance 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 17, 2015