

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: MICHAEL TERRY & JANE TERRY

(Case No. 11652)

A hearing was held after due notice on October 19, 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 setback requirement.

Findings of Fact

The Board found that the Applicants are seeking a variance of five (5) feet from the ten (10) feet north side yard setback requirement for a proposed dwelling, a variance of 8.24 feet from the ten (10) feet north side yard setback requirement for the proposed HVAC, a variance of 0.4 feet from the five (5) feet south side yard setback requirement for a proposed set of steps, and a variance of 4.4 feet from the ten (10) feet south side yard setback requirement for a proposed attached shed. This application pertains to certain real property located on the southeast side of Blue Teal Road approximately 1,645 feet northeast of Swann Drive (911 Address: 37072 Blue Teal Road, Selbyville); said property being identified as Sussex County Tax Map Parcel Number 5-33-12.16-475.00.

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 July 13, 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. Michael Terry was sworn in to testify about the Application and James Fuqua, Esquire, appeared on behalf of the Applicants. Mr. Fuqua submitted exhibits to the Board.
4. The Board found that Mr. Fuqua stated that the Property is located in Swann Keys.
5. The Board found that Mr. Fuqua stated that the lot measures approximately 40 feet wide by 102 feet deep and is 4,064 square feet in size.
6. The Board found that Mr. Fuqua stated that the Property is unique due to its narrow width and small size.
7. The Board found that Mr. Fuqua stated that the rear yard is adjacent to the lagoon.
8. The Board found that Mr. Fuqua stated that the existing manufactured home will be removed and a new dwelling will be constructed.
9. The Board found that Mr. Fuqua stated that the variances will enable reasonable use of the Property.
10. The Board found that Mr. Fuqua stated that the difficulty was not created by the Applicants. The Applicants did not create the size of the Property.
11. The Board found that Mr. Fuqua stated that the other lot owners in the development are replacing single wide manufactured homes with larger dwellings. The proposed dwelling is similar to other dwellings in the development.
12. The Board found that Mr. Fuqua stated that the Applicants did not create the size of the Property.
13. The Board found that Mr. Fuqua stated that the proposed dwelling will not alter the essential character of the neighborhood. There have been numerous variances granted in the development.

14. The Board found that Mr. Fuqua stated that the variances requested are the minimum variances necessary to afford relief.
15. The Board found that Mr. Fuqua stated that the shed will be attached to the dwelling.
16. The Board found that Mr. Fuqua stated that the proposed shed and HVAC will be located in the side yard to allow room for parking, which will be in the front yard.
17. The Board found that Mr. Terry, under oath, affirmed the statements made by Mr. Fuqua.
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. The Property is quite small and is located adjacent to a lagoon as evidenced by the survey. 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 build a 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 build a dwelling, shed, HVAC system, 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, shed, HVAC system, and shed to be constructed on the Property. The Board is convinced that the size, shape, and location of the dwelling, shed, HVAC system, 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 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 Applicants 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, shed, HVAC system, and shed will have no effect on the character of the neighborhood. Swann Keys has evolved from a community of single-wide manufactured homes to a community of stick-built dwellings. This dwelling fits with the evolving nature of Swann Keys. Similar variances have also been granted nearby. 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 construct a reasonably sized dwelling, shed, HVAC system, and shed 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, 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 December 15, 2015