

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: TIMOTHY R. SCOTT

(Case No. 11699)

A hearing was held after due notice on January 25, 2016. The Board members present were: Mr. Dale Callaway, Mr. John Mills, Mr. Jeff Hudson, Mr. Norman Rickard, 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 Applicant is seeking a variance of ten (10) feet from the fifteen (15) feet corner side yard setback requirement for a proposed addition and a variance of four (4) feet from the ten (10) feet side yard setback requirement for an existing dwelling. This application pertains to certain real property is located on the northeast corner of Pintail Drive and Swann Drive (911 Address: 36921 Pintail Drive, Selbyville); said property being identified as Sussex County Tax Map Parcel Number 5-33-12.16-1.01.

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 19, 1996.
2. The Board found that the Office of Planning & Zoning received one (1) letter in support of the Application, one (1) letter of no objection to the Application, and had not received any correspondence in opposition to the Application.
3. Timothy Scott and John Slaughter were sworn in to testify about the Application.
4. The Board found that Mr. Scott testified that the existing Class "C" dwelling was placed on the Property in 1984. The dwelling is on a permanent concrete foundation.
5. The Board found that Mr. Scott testified that the side yard setback requirement in 1984 was five (5) feet.
6. The Board found that Mr. Scott testified that he purchased the Property in 1993.
7. The Board found that Mr. Scott testified that the proposed addition will be fifteen (15) feet wide and will match the exterior of the existing dwelling.
8. The Board found that Mr. Scott testified that the Property is a triangularly shaped which makes it impossible to build an addition elsewhere on the lot.
9. The Board found that Mr. Scott testified that the adjacent property is a vacant lot that is actually Swann Drive. He has rented and maintained that portion of Swann Drive without knowing it was actually a portion of Swann Drive. The portion of Swann Drive adjacent to his property is not used by vehicles and is surrounded by water on two (2) sides. The adjacent vacant lot cannot be developed.
10. The Board found that Mr. Scott testified that the triangular shaped lot is unique in shape. The lot measures 97 feet across the front and twenty (20) feet across the rear.
11. The Board found that Mr. Scott testified that the Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code.
12. The Board found that Mr. Scott testified that the exceptional practical difficulty was not created by the Applicant.
13. The Board found that Mr. Scott testified that the variances will not alter the character of the neighborhood and the variances will not impair the uses of the

neighboring and adjacent properties. There are no objections from any neighbors.

14. The Board found that Mr. Scott testified that he could not build the addition to the rear of the dwelling because of the internal layout of the house.
15. The Board found that Mr. Scott testified that he has reduced the size of the addition to minimize the variance being requested and the rear portion of the addition will be angled to follow the property line.
16. The Board found that Mr. Scott testified that the addition is to allow him to more easily navigate around his dwelling and that he uses an electric scooter to aid with mobility.
17. The Board found that Mr. Scott testified that he has experienced some flooding issues in the rear yard.
18. The Board found that Mr. Slaughter testified that he is the Applicant's contractor.
19. The Board found that Mr. Slaughter testified that the Applicant has physical difficulties and the addition will provide additional space and storage near the Applicant's bedroom. The proposed addition will also give the Applicant more space to navigate within his home which is needed due to his physical difficulties.
20. The Board found that Mr. Slaughter testified that the portion of Swann Drive adjacent to the Property was never constructed and that the owners of the vacant lot do not object to the variances. The vacant lot is unbuildable.
21. The Board found that no parties appeared in support of or in opposition to the Application.
22. 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 size and shape. The Property is quite small and is exceptionally narrow in the rear yard as evidenced by the survey. In fact, the rear yard of the lot is only approximately 29 feet wide. The Property is also unique because it is adjacent to a portion of Swann Drive which was never developed. Rather, the Applicant has leased and maintained that lot since 1993 and it is unlikely that the adjacent lot can ever be developed. Likewise, it is unlikely that the adjacent lot will be used for traffic. The unique size and shape of the Property have created a limited buildable area available to the Applicant and have created an exceptional practical difficulty for the Applicant who seeks to build an addition to the existing dwelling on the lot. This difficulty is further exacerbated by the fact that the Property is considered a corner lot which further limits the building envelope. The Board also notes that the rear of the Property is also subject to flooding at times.
 - 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 an addition to the dwelling 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 addition to be constructed on the Property. The dwelling has been in its current location for many years and the Applicant needs an addition to give him space to navigate through the dwelling more easily. The Board notes that the Applicant suffers from physical difficulties. The Board is convinced that the size, shape, and location of this dwelling and

addition are reasonable, which is confirmed when reviewing the survey provided by the Applicant.

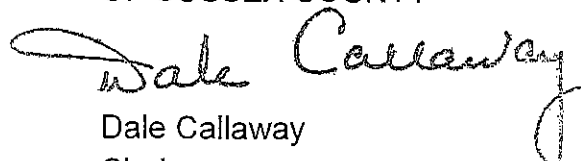
- c. The exceptional practical difficulty was not created by the Applicant. The Applicant did not create the unusual size and shape of the Property. The unique lot size and shape have resulted in a limited building envelope on the Property and the small building envelope has created the exceptional practical difficulty. The unique characteristics of the Property are clear when reviewing the survey. Furthermore, the dwelling was placed on the Property by a prior owner and has been in its present location for many years. 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 by a prior owner. Additionally, the Board notes that the Applicant suffers from physical difficulties which necessitate the construction of the proposed addition.
- 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 addition will have no effect on the character of the neighborhood. The dwelling has been on the Property for many years and the addition will be constructed on the side of the Property which abuts a vacant lot leased by the Applicant. The vacant lot is unbuildable and is not used as a street; though it is identified as a street on the Sussex County Tax Map. Despite the longstanding location of the dwelling, no complaints were noted in the record about its location and the concern raised by one neighbor pertained to the addition if it was constructed on the other side of the house. This neighbor appeared to have no objection to the addition at its proposed location. Ultimately, 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 addition on the Property and to retain the dwelling on the lot.
- f. The Board also finds that the Applicant suffers from a disability and that the variance approval represents a reasonable accommodation.

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 Member 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 March 22, 2016