

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: PATRICK B. SULECKI AND LISA M. SULECKI

(Case No. 11705)

A hearing was held after due notice on February 1, 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 side yard setback requirement.

Findings of Fact

The Board found that the Applicants are seeking a variance of 0.4 from the ten (10) feet side yard setback requirement on the south side for a screen porch, a variance of 7.8 feet from the ten (10) foot feet yard setback requirement on the north side for a set of steps, a variance of 7.6 feet from the ten (10) feet side yard setback requirement on the north side for a HVAC unit, and a variance of 4 feet from the ten (10) feet side yard setback requirement on the north side for an existing dwelling. This application pertains to certain real property located on the northwest side of Mallard Drive approximately 0.35 miles northeast of Swann Drive (911 Address: 37071 Mallard Drive, Selbyville); said property being identified as Sussex County Tax Map Parcel Number 5-33-12.16-102.00.

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 6, 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. The Board found that Patrick Sulecki was sworn in to testify about the Application. Ken Feaster, Esquire, presented the case on behalf of the Applicants.
4. The Board found that Mr. Feaster stated that a building permit for the dwelling was issued in 1993 and a Certificate of Compliance was subsequently issued 1993. The screened-in porch was built in 2001 on the south side of the Property.
5. The Board found that Mr. Feaster stated that the Applicants purchased the Property in August 2015 and a survey completed for settlement showed the encroachments.
6. The Board found that Mr. Feaster stated that the dimensions of the lot and home make this Property unique.
7. The Board found that Mr. Feaster stated that the Applicants face exceptional practical difficulty without the variances the structures would have to be demolished.
8. The Board found that Mr. Feaster stated that the Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code since the structures are permanent.
9. The Board found that Mr. Feaster stated that the Applicants purchased the Property in its current state and the exceptional practical difficulty was not created by the Applicants.
10. The Board found that Mr. Feaster stated that the variances do not alter the essential character of the neighborhood. Rather, the structures are part of the character of the neighborhood.
11. The Board found that Mr. Feaster stated that the use does not impair the uses of the neighboring and adjacent properties.

12. The Board found that Mr. Feaster stated that the variances sought are the minimum variances to afford relief and the variances are the least modifications of the regulations at issue.
13. The Board found that Mr. Feaster stated that the steps on the north side of the Property are proposed to be replaced on the current footprint.
14. The Board found that Mr. Sulecki, under oath, affirmed the statements made by Mr. Feaster.
15. The Board found that Mr. Sulecki testified that the existing dwelling is a one story structure and that a significant portion of the rear of the Property is located in the lagoon.
16. The Board found that no parties appeared in support of or in opposition to the Application.
17. 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 narrow width which is evident when reviewing the survey provided by the Applicant. The Property is also unique because a significant portion of the rear of the lot is located in a lagoon. The uniqueness of the Property limits the building envelope on the Property and has created an exceptional practical difficulty for the Applicants who seek to retain an existing dwelling and related structures 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 width and a significant portion of the rear yard is under water. The buildable area thereof is limited due to these conditions. The Applicants seek to retain a dwelling and related structures of a 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 related structures to remain on the Property. The Board is convinced that the shape and location of these structures 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 width of the Property or the lagoon in the rear yard; both of which have resulted in a limited building envelope on the Property. The small building envelope has created the exceptional practical difficulty. Furthermore, the structures were placed on the Property by a prior owner and have been in their present location for many years. 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 structures thereon by the 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 structures will have no effect on the character of the neighborhood. The structures have been on the Property for many years and despite the longstanding location of these structures, no complaints were noted in the record about their location. 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. The Board also notes that the porch encroaches into the setback area by mere inches and the encroachment is likely difficult to see from neighboring properties.

- 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 related structures on the Property. The Applicants do not intend to make any additions to the structures and only seek the variance to allow the existing structures to remain in its current location. The Board notes that the steps will be replaced in the same footprint as the current steps. No further encroachment will be made.

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.