

**BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY**

**IN RE: RAYMOND WALLACE AND NANCY WALLACE**

**(Case No. 11710)**

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 four (4) feet from the ten (10) feet side yard setback requirement on the north side for a dwelling, a variance of eight (8) feet from the ten (10) feet side yard setback requirement on the south side for a set of steps and a deck, 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 four (4) feet from the ten (10) feet side yard setback requirement on the south side for a proposed dwelling. This application pertains to certain real property located on the northwest side of Blue Teal Road approximately 1,314 feet northeast of Swann Drive (911 Address: 37051 Blue Teal Drive, Selbyville); said property being identified as Sussex County Tax Map Parcel Number 5-33-12.16-435.00.

1. The Board was given copies of the Application and a survey of the Property dated September 22, 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 Bryan Elliot was sworn in to testify about the Application.
4. The Board found that Mr. Elliot testified that the Property is unique because it is narrow and is only 40 feet wide.
5. The Board found that Mr. Elliot testified that the Property is located in Swann Keys and parking is an issue in the development. It is difficult to place a dwelling on the lot while also providing for parking
6. The Board found that Mr. Elliot testified that the Property cannot otherwise be developed in strict conformity to the Sussex County Zoning Code and the variances are necessary to enable reasonable use of the Property.
7. The Board found that Mr. Elliot testified that the proposed dwelling will only consist of 1,300 square feet and is a very small home. The dwelling will only be 26 feet wide and is rather narrow.
8. The Board found that Mr. Elliot testified that the exceptional practical difficulty was not created by the Applicants.
9. The Board found that Mr. Elliot testified that Swann Keys was originally developed as a mobile home park but has transitioned to a community with stick-built homes.
10. The Board found that Mr. Elliot testified that the existing manufactured home is in poor shape and has flooded two (2) different times.
11. The Board found that Mr. Elliot testified that the variances will not alter the character of the neighborhood and the neighbors have no objection to the Application.
12. The Board found that Mr. Elliot testified that the variances requested represent the least modifications of the regulations at issue and are the minimum variances necessary to afford relief.

13. The Board found that Mr. Elliot testified that the proposed dwelling will meet the flood zone requirements and be placed on pilings. Parking will be under the existing dwelling. The steps cannot be moved to the front of the dwelling and still allow for parking under the dwelling. Likewise, the HVAC cannot be moved under the dwelling because it would block parking areas as well.
14. The Board found that Mr. Elliot testified that a narrower dwelling would not be compliant with the Americans with Disabilities Act.
15. The Board found that no parties appeared in support of or in opposition to the Application.
16. 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 narrowness of the Property limits the building envelope on the Property and has created an exceptional practical difficulty for the Applicants who seek to build a dwelling, steps, deck, and HVAC system on the lot. The situation is also unique because parking is limited in the neighborhood thereby necessitating off-street parking and the Property floods so the house must be raised on pilings.
  - 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 the buildable area thereof is limited due to its narrowness. The Applicants seek to construct a dwelling, steps, deck, and HVAC system 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 the Applicants to build a dwelling, steps, deck, and HVAC system on the Property. The Board is convinced that the size, shape, and location of these structures are reasonable, which is confirmed when reviewing the survey provided by the Applicants. The Board notes that the dwelling is only 1,300 square feet, which is particularly small.
  - c. The exceptional practical difficulty was not created by the Applicants. The Applicants did not create the unusual width of the Property which has resulted in a limited building envelope on the Property. Swann Keys was originally developed as a mobile home community with small lots and has evolved to a community of larger, stick-built dwellings such as the one proposed by the Applicants. Swann Keys also has parking issues which necessitate off-street parking on the lots. The small building envelope due to the narrowness of the lot combined with the need for off-street parking have created the exceptional practical difficulty. Furthermore, the existing dwelling has been flooded twice and needs to be removed due to its condition. 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, steps, deck, and HVAC system will have no effect on the character of the neighborhood. No complaints were noted in the record about the location of these structures and neighbors have indicated support of the Application. 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 them to construct a reasonably sized dwelling, steps, deck, and HVAC system on the Property. The Board notes that the dwelling is particularly small and the proposed design will allow for the dwelling to be raised on pilings and for ample parking 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, 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