

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: MADON CHURCH, LLC

(Case No. 11719)

A hearing was held after due notice on February 29, 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 Applicant is seeking a variance of four (4) feet from the ten (10) feet side yard setback requirement on both sides of the Property for a proposed dwelling. This application pertains to certain real property located on the northwest side of Swann Drive within the Swann Keys development (911 Address: 37873 Swann Drive, Selbyville); said property being identified as Sussex County Tax Map Parcel Number 5-33-12.16-530.00.

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 November 5, 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 Todd Crkvenic was sworn in to testify about the Application. David Hutt, Esquire, presented the case on behalf of the Applicant. Mr. Hutt submitted exhibits to the Board to review including portions of the tax maps, photographs and aerial images of the Property, and decisions of the Board of Adjustment.
4. The Board found that Mr. Hutt stated that Mr. Crkvenic is a member of the Madon Church, LLC.
5. The Board found that Mr. Hutt stated that the lot is in Swann Keys which was developed as a manufactured home community with small single-wide manufactured homes. The community is evolving and replacing single-wide manufactured homes with single-family dwellings.
6. The Board found that Mr. Hutt stated that, within the last five (5) years, over fifty (50) variances have been granted in this community.
7. The Board found that Mr. Hutt stated that the Property is undersized and narrow.
8. The Board found that Mr. Hutt stated that a standard approved lot in a GR zoning district consists of 10,000 square feet and must be seventy-five (75) feet wide. A minimum sized lot in a GR zoning district has a building envelope of approximately 5,000 square feet.
9. The Board found that Mr. Hutt stated that the Applicant's lot is currently vacant and measures 40 feet by 100 feet, which is 6,000 square feet smaller than a standard lot in a GR zoning district. The Property has a building envelope of only 1,200 square feet.
10. The Board found that Mr. Hutt stated that the proposed two-story dwelling will be 28 feet wide by 30 feet deep with three (3) bedrooms and two (2) bathrooms which is similar in size and scale to other dwellings in the neighborhood.
11. The Board found that Mr. Hutt stated that the proposed dwelling will be six (6) feet from each side yard.
12. The Board found that Mr. Hutt stated that the variances requested allow for the proposed deck and porch without further encroachment. The location of the proposed structure also allows room for a shed and HVAC unit to be placed at

the rear of the proposed dwelling. There will be room for off street parking in front of the dwelling.

13. The Board found that Mr. Hutt stated that the requested variances are less than the variances granted for neighboring properties.
14. The Board found that Mr. Hutt stated that the non-conforming undersized lot makes this Property unique.
15. The Board found that Mr. Hutt stated that the variances are necessary to enable reasonable use of the Property.
16. The Board found that Mr. Hutt stated that the exceptional practical difficulty was not created by the Applicant.
17. The Board found that Mr. Hutt stated that the variances will not alter the essential character of the neighborhood.
18. The Board found that Mr. Hutt stated that the variances are the minimum variances necessary to afford relief.
19. The Board found that Mr. Crkvenic, under oath, affirmed the statements made by Mr. Hutt.
20. The Board found that Mr. Crkvenic testified that the existing single-wide manufactured home has been removed.
21. The Board found that Mr. Crkvenic testified that the rear deck is a second floor deck and the front porch is on the first level. The proposed shed will be behind or under the proposed deck.
22. The Board found that Mr. Crkvenic testified a dwelling built in compliance with the Sussex County Zoning Code would be unusually small.
23. The Board found that Mr. Crkvenic testified there are no flooding issues on the Property.
24. The Board found that no parties appeared in support of or in opposition to the Application.
25. 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 and small size 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 Applicant who seeks to build a dwelling on the lot. The building envelope is substantially smaller than the minimum standard building envelope for lots within a GR zoning district.
 - 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 Applicant seeks to construct a dwelling 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 the Applicant to build a dwelling on the Property. The Board is convinced that the shape and location of this dwelling 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 width and size 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

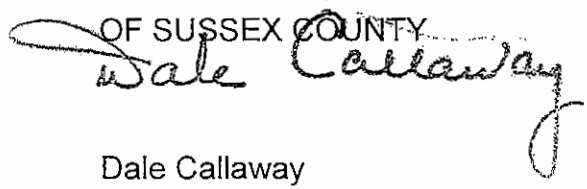
proposed by the Applicant. Swann Keys also has parking issues which necessitate off-street parking on the lots. The small building envelope due to the narrowness of the lot combined with the need for off-street parking have created the exceptional practical difficulty. The Board is convinced that the exceptional practical difficulty was not created by the Applicant 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 will have no effect on the character of the neighborhood. The testimony reflects that the dwelling will be similar to other dwellings built recently in the neighborhood and the dwelling is reasonable in size. 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 Applicant has demonstrated that the variances sought will allow it to construct a reasonably sized dwelling 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 April 5, 2016