

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: MICHAEL EVANS

(Case No. 11844)

A hearing was held after due notice on September 19, 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 a variance from the side yard setback requirement.

Findings of Fact

The Board found that the Applicant is seeking a variance of 4.4 feet from the ten (10) feet side yard setback requirement on the south side for a proposed attached shed, a variance of 4.4 feet from the ten (10) feet side yard setback requirement on the south side for a stoop, a variance of 4.5 feet from the ten (10) feet side yard setback requirement on the north side for a proposed dwelling, and a variance of 8.3 feet from the ten (10) feet side yard setback requirement on the north side for an HVAC unit. This application pertains to certain real property located on the northwest side of Blue Teal Road approximately 0.27 miles northeast of Swann Drive (911 Address: 37059 Blue Teal Road, Selbyville); said property being identified as Sussex County Tax Map Parcel Number.: 5-33-12.16-438.00.

1. The Board was given copies of the Application, a survey of the Property dated July 19, 2016, an aerial photograph of the Property and a portion of the tax map.
2. The Board found that the Office of Planning & Zoning received no correspondence in support of or in opposition to the Application.
3. The Board found that Michael Evans was sworn in to testify about the Application. Mr. Evans submitted pictures and letters of support to his Application.
4. The Board found that Mr. Evans testified that he purchased the Property in 2008. The existing manufactured home was placed on the lot in 1997 and the previous owner made additions to the manufactured home. He was told at the time of settlement that variances had been granted for the home and addition.
5. The Board found that Mr. Evans testified that he is planning on moving to the Property after retirement and is planning to remove the existing dwelling and replace it with a stick-built dwelling on a permanent foundation. The proposed dwelling will be a Cape Code style home.
6. The Board found that Mr. Evans testified that the Property is unique because it is narrow and measures 40 feet by 100 feet. The narrowness limits the size dwelling that can be built.
7. The Board found that Mr. Evans testified that the proposed dwelling will be elevated higher than the existing dwelling and will be safer from potential flooding. The Property slopes towards the canal and the rear of the Property floods at times. The proposed structure will also be better insulated and utilize less energy as well.
8. The Board found that Mr. Evans testified that he will replace the existing bulkhead to minimize flooding issues.
9. The Board found that Mr. Evans testified that additional room is needed because his mother-in-law will be moving in with his family.
10. The Board found that Mr. Evans testified that the exceptional practical difficulty was not created by the Applicant.
11. The Board found that Mr. Evans testified that the proposed dwelling will not exceed the dimensions of the existing manufactured home and addition and the parking area will not change.

12. The Board found that Mr. Evans testified that the variances will not alter the essential character of the neighborhood and the proposed dwelling is similar to others being built in the development. The Property is located within Swann Keys.
13. The Board found that Mr. Evans testified that he has reviewed the plans with his neighbors and they support the Application.
14. The Board found that Mr. Evans testified that the twenty-four (24) feet wide proposed dwelling is the minimum width dwelling they can build to fulfill their family's needs. They initially considered a twenty-six (26) feet wide home but feel maintaining the existing footprint of the existing manufactured home would be the minimum to afford relief.
15. The Board found that Mr. Evans testified that an existing shed in the rear of the Property will be removed.
16. The Board found that Mr. Evans testified that the proposed shed cannot be placed in the rear yard due to the location of the deck and the porch and that, if he were to place the shed in the rear yard, he would need a variance for that as well.
17. The Board found that Mr. Evans testified that he considered a narrower dwelling but it was not large enough to meet his family's needs.
18. The Board found that Mr. Evans testified that he discussed with his builder moving the home closer to the rear yard to take advantage of the building envelope.
19. The Board found that Mr. Evans testified that he did not want to move the HVAC system to the other side of the Property for aesthetic reasons but he is willing to relocate the HVAC system if necessary.
20. The Board found that no parties appeared in support of or in opposition to the Application.
21. The Board tabled the Application until October 3, 2016, at which time the Board discussed and voted on 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 for the variance for the dwelling and the stoop met the standards for granting a variance. The findings below further support the Board's decision to approve the Application.
 - a. The Property is clearly unique as it is a small lot with some flooding issues in the rear yard. The Property was created and prior to the Applicant's acquisition thereof and consists of only 4,110 square feet; as is clearly shown on the survey. The small size of the Property has created an exceptional practical difficulty for the Applicant and this difficulty is exacerbated by the narrowness of the Property which is only 40 feet wide. These unique physical conditions have created an unusual and limited building envelope for the Applicant.
 - b. Due to the uniqueness of the Property, the Property cannot be developed by a dwelling and stoop in strict conformity with the Sussex County Zoning Code. The dwelling is only 24.4 feet wide which is a narrow home and is no wider than the previous home located on the Property. The Applicant is unable, however, to place this dwelling on the lot along with a stoop for reasonable access to the home without violating the Sussex County Zoning Code. The Board is convinced that the variances for the dwelling and stoop are necessary to enable the reasonable use of the Property as the variances will allow the dwelling and stoop to be placed on the Property. The Board is convinced that the shape and location of this dwelling and stoop are reasonable, which is confirmed when reviewing the survey provided by the Applicant. If the Property was 50 feet wide, which is still narrow, no variance would likely be needed.
 - c. The exceptional practical difficulty was not created by the Applicant. The Property was created and developed prior to the enactment of the Sussex

County Zoning Code and is an undersized lot with flooding problems. The Board notes that the narrowness greatly limits the building envelope of the lot. The Applicant did not create the size and shape of the lot. Rather, those conditions pre-existed the Applicant's acquisition of the Property. These unique physical conditions have resulted in a limited building envelope and have created the exceptional practical difficulty for the Applicant.

- 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 dwelling and stoop are similar to other homes in the neighborhood and will not exceed the footprint of the existing structures which have been on the Property for nearly 20 years. The Applicant has received support from his neighbors for the proposed development. Notably, no complaints were noted in the record about the proposed 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.
 - e. The variances sought for the dwelling and stoop 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 for those structures sought will allow the Applicant to place a reasonably sized home on the Property. The Board is convinced that the Applicant attempted to minimize the width of the dwelling and the proposed unit is the minimum sized unit to meet the Applicant's needs. Additionally, the stoop will provide the Applicant with necessary access to the home.
23. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, the Board determined that the application for the variances for the shed and HVAC system failed to meet the standards for granting a variance. The findings below further support the Board's decision to deny the Application.
- a. The Applicant failed to convince the Board that the shed and HVAC system could not be developed in strict conformity with the Sussex County Zoning Code. The Applicant noted that a previous shed was placed in the rear yard and the Board was not convinced that the shed could not be placed in the rear yard – where there is room in the building envelope – without a variance. The Board also had concerns about the location of the proposed HVAC system. The system would be exceptionally close to the neighbor to the north. The Applicant acknowledged that he could move the HVAC system elsewhere. The Board thus was not convinced that the variances for these structures were necessary to enable the reasonable use of the Property. The Property is a vacant lot and the Applicant proposes to construct a dwelling with a stoop. While variances are needed for the dwelling and stoop, as proposed, there is still unused space in the building envelope; particularly in the rear yard. The entirety of the shed and HVAC system, however, would be placed in the setback area. The Applicant did not adequately explore other options to place the shed and deck, such as placing the structures in the rear yard. Ultimately, it is clear to the Board that the Property can be developed by a shed and HVAC system in strict conformity with the Sussex County Zoning Code and that the variance is not necessary to enable reasonable use of the Property.
 - b. The Board finds that the Applicant is creating his own exceptional practical difficulty by proposing to a construct a shed and HVAC system which does

not fit within the building envelope. The Applicant's decision to construct a shed and HVAC system in these locations is the reason for the need for a variance and has nothing to do with the size, shape, or condition of the Property. There is no unusual condition to the Property which has created this difficulty. The Board notes that there is room in the building envelope to accommodate those structures without a variance. As such, the Board was not convinced that the variance request was the product of a *need*. Instead, the variance request appears to be the product of a *want* as the Applicant seeks to build the shed and HVAC system as proposed for purposes of convenience, profit, and / or caprice. Since the Applicant can build a shed and HVAC system that can comply the Sussex County Zoning Code, the need for the variance is something created by the Applicant's wants rather than an unusual physical condition relating to the Property. The Applicant have thus created their own exceptional practical difficulty.

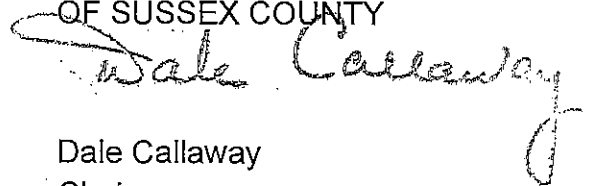
- c. Since the variances for the shed and HVAC system are not necessary to enable the reasonable use of the Property, the Board also finds that the variances requested are not the minimum variances necessary to afford relief. Furthermore, the Board finds that no variance for the shed and HVAC system is necessary to afford relief since there is space to build a reasonably sized shed and HVAC system on the Property in compliance with the Sussex County Zoning Code.

The Board granted the variance application in part and denied in part finding that it met the standards for granting a variance for the variances for the dwelling and stoop but did not meet the variance requirements for the shed and the HVAC system.

Decision of the Board

Upon motion duly made and seconded, the variance application was approved in part and denied in part. The Board Members in favor were Mr. Dale Callaway, Mr. Jeff Hudson, Mr. John Mills, and Mr. Brent Workman. Mr. Norman Rickard voted against the Motion to approve the variance application in part and to deny the application in part.

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 13, 2016