

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: JEFFREY WYATT

(Case No. 11888)

A hearing was held after due notice on December 12, 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 5.5 feet from the ten (10) feet side yard setback requirement on the northeast side for a proposed dwelling and a variance of 3.8 feet from the ten (10) feet side yard setback requirement on the southwest side for a proposed dwelling, a variance of 7.8 feet from the ten (10) feet side yard setback requirement on the southwest side for proposed steps, platform, and HVAC system. This application pertains to certain real property located on the east side of Laws Point Road approximately 0.53 miles northeast of Swann Drive (911 Address: 37074 Laws Point Road, Selbyville); said property being identified as Sussex County Tax Map Parcel Number 5-33-12.12-4.00.

1. The Board was given copies of the Application, a survey of the Property dated October 31, 2016, an aerial photograph, 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 Adam Rones, Jeffrey Wyatt, and Cynthia Wyatt were sworn in to testify about the Application.
4. The Board found that Mr. Rones testified that the Applicants propose to place a two (2) boxed modular home on the Property.
5. The Board found that Mr. Rones testified that the Property is located in Swann Keys and is only forty (40) feet wide.
6. The Board found that Mr. Rones testified that the development was designed as a mobile home park but the development is transitioning from a mobile home park and homes are being replaced with larger dwellings.
7. The Board found that Mr. Rones testified that the proposed dwelling is similar in size as other dwellings in the development.
8. The Board found that Mr. Rones testified that the Property is unique because it is only forty (40) feet wide.
9. The Board found that Mr. Rones testified that the Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code and be consistent with the character and market value of the development.
10. The Board found that Mr. Rones testified that the difficulty was not created by the Applicant since the Applicant did not create the size of the lot or setback requirements.
11. The Board found that Mr. Rones testified that the Applicant only recently acquired the Property.
12. The Board found that Mr. Rones testified that the variances will not alter the essential character of the neighborhood. The proposed dwelling is consistent in design and orientation on the lot as other homes in the neighborhood.
13. The Board found that Mr. Rones testified that the variances requested are the minimum variances necessary to afford relief.

14. The Board found that Mr. Rones testified that the proposed dwelling is 28 feet wide and a dwelling that is 24 feet wide would not be consistent with other homes in the neighborhood.
15. The Board found that Mr. Rones testified that the previous single-wide manufactured home has been removed.
16. The Board found that Mr. Rones testified that all single-wide manufactured homes are being replaced with dwellings.
17. The Board found that Mr. Rones testified that the proposed dwelling will be on pilings as the Property has flooded at times.
18. The Board found that Mr. Rones testified that the Cape Cod dwelling will consist of 1 ½ stories. The second floor will remain unfinished.
19. The Board found that Mr. Rones testified that the Applicant discussed placing the steps, platform, and HVAC system elsewhere but the proposed location of the steps, platform, and HVAC system is consistent with the neighborhood.
20. The Board found that Mr. Rones testified that the proposed porch cannot be centered with the dwelling since it is an integral part of the structure.
21. The Board found that one (1) party appeared in support of the Application.
22. The Board found that no parties appeared in opposition to the Application.
23. 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 clearly unique as it is a small and narrow lot. The Property was created and developed as part of a mobile home park that is now evolving into a community with stick-built and larger homes. The Property is only forty (40) feet wide; as is clearly shown on the survey. The narrowness of the Property has created an exceptional practical difficulty for the Applicant. These unique physical conditions have created an unusual and limited building envelope for the Applicant. Additionally, the Property is subject to flooding which necessitates that the home be elevated.
 - b. Due to the uniqueness of the Property, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property was developed many years ago by a prior owner but the previous manufactured home has been removed. The Applicant seeks to place the proposed dwelling and related structures on the Property 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 dwelling and related structures to be constructed 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 Applicant.
 - c. The exceptional practical difficulty was not created by the Applicant. The Property was created and developed many years ago and is an undersized lot with flooding problems. The Board notes that the narrowness greatly limits the building envelope of the lot. The Applicant only recently purchased the lot and 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 structures are similar to other houses in the neighborhood and the Applicant has designed the home to fit with the character of the neighborhood. The Board notes that Swann Keys is evolving from a community of mobile homes to a community of stick-built homes and the proposed dwelling and related structures is consistent with this evolution. 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.

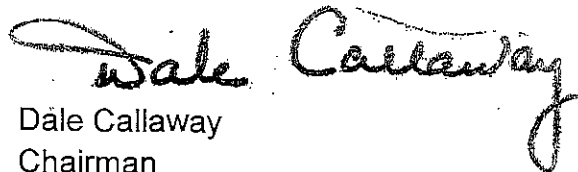
- e. The variances sought are the minimum variances necessary to afford relief and the variances requested represent the least modifications possible of the regulations at issue. The Applicant has demonstrated that the variances sought will allow the Applicant to construct a reasonably sized home with related structures on the lot and the home will be consistent with other homes in the community. The Board is convinced that the Applicant has taken appropriate measures to limit the encroachments into the setback areas in designing this home.

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 2/7/2017.