

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: KATHLEEN SPALT

(Case No. 11914)

A hearing was held after due notice on February 6, 2017. The Board members present were: Mr. John Mills, Mr. Jeff Hudson, 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 2.7 feet from the ten (10) feet side yard setback requirement on the south side for a proposed dwelling, a variance 4.0 feet from the ten (10) feet side yard setback requirement on the north side for a proposed dwelling, and a variance of 1.7 feet from the five (5) feet side yard setback requirement on the south side for proposed steps. This application pertains to certain real property located on the northwest side of Blue Teal Road approximately 846 feet northeast of Swann Drive (911 Address: 37025 Blue Teal Road, Selbyville); said property being identified as Sussex County Tax Map Parcel Number 5-33-12.16-423.00.

1. The Board was given copies of the Application, a proposed site plan dated November 9, 2016, photographs of nearby properties, 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 or in opposition to the Application.
3. The Board found that Kathleen Spalt and Henry Greenwell were sworn in to testify about the Application.
4. The Board found that Ms. Spalt testified that the Property is 40 feet wide by 100 feet long. Other lots located in the development are 50 feet wide.
5. The Board found that Ms. Spalt testified that the existing trailer had to be removed due to its age and is being replaced with the new proposed dwelling.
6. The Board found that Ms. Spalt testified that the variances are necessary to enable reasonable use of the Property.
7. The Board found that Ms. Spalt testified that she has not created the exceptional practical difficulty.
8. The Board found that Ms. Spalt testified that the proposed dwelling is a modular home and is pre-fabricated. The dwelling cannot be reduced in width to fit on the lot.
9. The Board found that Ms. Spalt testified that, if the lot was wider, no variance would be needed.
10. The Board found that Ms. Spalt testified that the variances will not alter the character of the neighborhood.
11. The Board found that Ms. Spalt testified that there are other properties within the neighborhood that have received variances.
12. The Board found that Ms. Spalt testified that the variances requested are the minimum variances necessary to afford relief.
13. The Board found that Ms. Spalt testified that she did not create the width of the Property.
14. The Board found that Ms. Spalt testified that she is retired and wants a single-level home.
15. The Board found that Mr. Greenwell testified that the proposed dwelling is smaller in width compared to a double-wide manufactured home.

16. The Board found that Mr. Greenwell testified that two story dwellings exist in the development on similar sized lots.
17. The Board found that Mr. Greenwell testified that at least fifty (50) variances have been granted for neighboring lots.
18. The Board found that no parties appeared in support of or in opposition to the Application.
19. 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.
 - 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 steps 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 steps 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. The Board notes that the Applicant is retired and prefers a single level home; presumably to allow her to navigate more freely around her home.
 - 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. 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 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 newer homes and many variances have been granted in the area. Pictures of nearby homes evidence that they are similar in character to the type of home being proposed here. 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

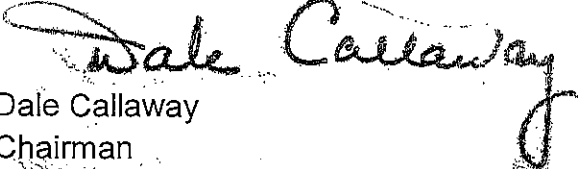
sought will allow the Applicant to construct a reasonably sized home with steps on the lot and the home will be consistent with other homes in the community. The Board is convinced that the Applicant has taken appropriate measures to limit the encroachments into the setback areas in designing this home. The Board notes that if the Property was 50 feet wide, the home would likely fit on the Property without a variance.

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. Jeff Hudson, Mr. John Mills, and Mr. Brent Workman. No Board Member voted against the Motion to approve the variance application. Mr. Dale Callaway and Mr. Norman Rickard did not participate in the discussion or vote on this 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 3/8/2017