

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

**IN RE: HANS PFAB**

**(Case No. 11922)**

A hearing was held after due notice on February 20, 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 a variance from the side yard setback requirement.

Findings of Fact

The Board found that the Applicant is requesting a variance of 8.5 feet from the ten (10) feet side yard setback requirement on the north side for a proposed HVAC system and a variance of 5 feet from the ten (10) feet side yard setback requirement on the north side for a proposed dwelling. This application pertains to certain real property located on the northwest side of Swann Drive approximately 122 feet from the corner of Swann Drive (911 Address: 37787 Swann Drive, Selbyville); said property being identified as Sussex County Tax Map Parcel Number 5-33-12.20-57.01.

1. The Board was given copies of the Application, an aerial photograph of the Property, an elevation certificate, a survey of the Property dated December 16, 2016, 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 Hans Pfab was sworn in to testify about the Application.
4. The Board found that Mr. Pfab testified that the Property is only 40 feet wide and was previously improved by a singlewide mobile home.
5. The Board found that Mr. Pfab testified that the proposed dwelling is 24 feet wide.
6. The Board found that Mr. Pfab testified that variances are needed for the home and to provide space for parking.
7. The Board found that Mr. Pfab testified that the Property is narrow and cannot be developed without a variance.
8. The Board found that Mr. Pfab testified that the variances will not alter the essential character of the neighborhood.
9. The Board found that Mr. Pfab testified that five variances have been granted for properties on the same street as the Property.
10. The Board found that Mr. Pfab testified that the existing singlewide needs to be removed and replaced with the proposed dwelling. The proposed home is a modular home type structure.
11. The Board found that Mr. Pfab testified that the home will be 5 feet from the north side yard property line so only a variance of 5 feet is needed on that side of the Property. The buffer shown on the survey is not needed.
12. The Board found that Mr. Pfab testified that he asked the builder about the location of the HVAC system but the system fits on that side of the Property due to the blue prints.
13. The Board found that Mr. Pfab testified that the HVAC system needs a variance of 8.5 feet.
14. The Board found that Mr. Pfab testified that his neighbors are supportive of the proposed dwelling replacing the existing singlewide.
15. The Board found that Mr. Pfab testified that the proposed dwelling is the smallest home the Applicant could find to build on the Property.
16. The Board found that no parties appeared in support of or in opposition to the Application.


17. 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 HVAC system 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 HVAC system 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. 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 HVAC system 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. 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 and HVAC system on the lot and the home and structures will be consistent with other homes in the community.

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 the 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 4, 2017.