

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: MARY YEAGER

(Case No. 11928)

A hearing was held after due notice on March 20, 2017. The Board members present were: Mr. Dale Callaway, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for variances from the front yard and side yard setback requirements.

Findings of Fact

The Board found that the Applicant is seeking a variance of 17 feet from the thirty (30) feet front yard setback requirement for a proposed dwelling, a variance of 2.2 feet from the ten (10) feet side yard setback requirement on the north side for a proposed dwelling, a variance of 4.8 feet from the ten (10) feet side yard setback requirement on the north side for a proposed HVAC system, a variance of 4.3 feet from the ten (10) feet side yard setback requirement on the north side for proposed steps, a variance of 4.6 feet from the ten (10) feet side yard setback requirement on the south side for a proposed dwelling, a variance of 4.7 feet from the ten (10) feet side yard setback requirement on the south side for a proposed dwelling, and a variance of 2.3 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 is located on the southeast side of Laws Point Road approximately 1,084 feet northeast of Swann Drive (911 Address: 36976 Laws Point Road, Selbyville); said property being identified as Sussex County Tax Map Parcel Number 5-33-12.16-303.00.

1. The Board was given copies of the Application, a portion of the tax map of the area, an aerial photograph of the Property, and a survey of the Property dated February 22, 2017.
2. The Board found that the Office of Planning & Zoning received one (1) letter in support of the Application and no correspondence in opposition to the Application.
3. The Board found that Gil Fleming was sworn in to testify about the Application.
4. The Board found that Mr. Fleming testified that the Property is located in Swann Keys, which is a community created many years ago.
5. The Board found that Mr. Fleming testified that the Applicant has selected a home from Mr. Fleming's business.
6. The Board found that Mr. Fleming testified that the previous dwelling on the lot did not conform to the setback requirements.
7. The Board found that Mr. Fleming testified that the Property is unique and the building envelope does not allow for new, larger homes.
8. The Board found that Mr. Fleming testified that the proposed dwelling is a one story home and is modest in size as it measures 61 feet long.
9. The Board found that Mr. Fleming testified that the proposed dwelling is aesthetically pleasing.
10. The Board found that Mr. Fleming testified that the exceptional practical difficulty was not created by the Applicant.
11. The Board found that Mr. Fleming testified that the lot is forty (40) feet wide. If the lot was fifty (50) feet wide, the proposed dwelling would meet the side yard setback requirements.
12. The Board found that Mr. Fleming testified that, since the lot is only forty (40) feet wide, it is difficult to develop the Property in strict conformity with the Sussex County Zoning Code.

13. The Board found that Mr. Fleming testified that there will be no sheds or other buildings on the Property.
14. The Board found that Mr. Fleming testified that the setback requirements from the bulkhead require the proposed dwelling to be moved closer to the front yard.
15. The Board found that Mr. Fleming testified that there is flooding in the rear yard at times. It is beneficial for the proposed dwelling to be located away from the lagoon as much as possible. The proposed dwelling is being built closer to the road.
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 finds 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. The Board also notes that the rear of the Property floods and the Applicant seeks to place the dwelling away from the rear property line to alleviate concerns related to possible flooding of the lot.
 - 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 created many years ago and the previous home on the Property has been removed. The previous dwelling encroached into the setback areas. The Applicant seeks to place the proposed dwelling and 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 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. The Board notes that the narrowness of the lot greatly limits the building envelope. 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 is a replacement for a dwelling located on the Property which also encroached into the setback areas. The testimony confirms that the proposed dwelling will be aesthetically pleasing and will be an improvement to the Property. 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. Rather, the Board received a letter supporting the Application.

- 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 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. Dale Callaway, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman. No Board Member voted against the Motion to approve the variance application. Mr. Jeff Hudson 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 May 2, 2017