

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: ALLEN PLACE & KAREN PLACE

(Case No. 11934)

A hearing was held after due notice on April 3, 2017. The Board members present were: Mr. Dale Callaway, Mr. Jeff Hudson, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman.

Nature of the Proceedings

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

Findings of Fact

The Board found that the Applicants are seeking a variance of 5 feet from the ten (10) feet side yard setback requirement on the north side for a proposed dwelling, a variance of 8.2 feet from the ten (10) feet side yard setback requirement on the north side for a proposed HVAC unit, a variance of 2.8 feet from the ten (10) feet side yard setback requirement on the north side for a proposed covered porch, and a variance of 3.4 feet from the ten (10) feet side yard setback requirement on the south side for proposed two-story steps. This application pertains to certain real property is located on the east side of Canvasback Road approximately 2,070 feet north of Swann Drive (911 Address: 37078 Canvasback Road Selbyville); said property being identified as Sussex County Tax Map Parcel Number 5-33-12.16-371.00.

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 January 26, 2017.
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 Allen Place and Karen Place were sworn in to testify about the Application. James Fuqua, Esquire, presented the case on behalf of the Applicants and submitted exhibits for the Board to review.
4. The Board found that Mr. Fuqua stated that the Property is Lot 52 in Swann Keys.
5. The Board found that Mr. Fuqua stated that the Property is bordered by a lagoon in the rear yard.
6. The Board found that Mr. Fuqua stated that the Property measures 40 feet wide by 99 feet long and consists of 3,971 square feet. The Property is zoned General Residential.
7. The Board found that Mr. Fuqua stated that the Applicants propose to construct a new dwelling measuring 24 feet wide by 58 feet long. The new dwelling will have an enclosed porch on the rear.
8. The Board found that Mr. Fuqua stated that a reasonably sized home cannot be constructed on the lot while complying with the Sussex County Zoning Code.
9. The Board found that Mr. Fuqua stated that the Property is unique in size as it is small and narrow.
10. The Board found that Mr. Fuqua stated that the variances are necessary to enable reasonable use of the Property.
11. The Board found that Mr. Fuqua stated that the exceptional practical difficulty was not created by the Applicants.
12. The Board found that Mr. Fuqua stated that the difficulty results from the original Swann Keys layout. Swann Keys was originally developed as a manufactured home park for single-wide manufactured homes and has evolved to a community of new, modern homes.

13. The Board found that Mr. Fuqua stated that the variances will not alter the essential character of the neighborhood. Rather, the improvements will be similar to improvements on other properties and the requested variances are consistent with similar variances granted within Swann Keys.
14. The Board found that Mr. Fuqua stated that the proposed dwelling will improve the appearance of the neighborhood and increase the property value.
15. The Board found that Mr. and Mrs. Pierce, under oath, affirmed that statements made by Mr. Fuqua.
16. The Board found that Mr. Pierce testified that a portion of the front yard will be for parking.
17. The Board found that Mr. Pierce testified that the home will be a two-story home.
18. The Board found that Mr. Pierce testified that other homes along Canvasback Road are built closer to the north property line as well.
19. The Board found that no parties appeared in support of or in opposition to the Application.
20. 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 and consists of only 3,971 square feet; as is clearly shown on the survey. The narrowness and size of the Property have created an exceptional practical difficulty for the Applicants. These unique physical conditions have created an unusual and limited building envelope for the Applicants. The Board also notes that the front of the Property will be used for parking and the Applicants seek to place the dwelling away from the front property line to alleviate parking concerns. The parking area, however, also limits the already limited buildable area 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 as part of a mobile home park. The Applicants seeks to place the proposed dwelling and structures on the Property but are 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 Applicants.
 - c. The exceptional practical difficulty was not created by the Applicants. The Property was created and developed many years ago and is a narrow and undersized lot. The Board notes that the narrowness of the lot greatly limits the building envelope. The Applicants did not create the size and shape of the lot. Rather, those conditions pre-existed the Applicants' acquisition of the Property. These unique physical conditions have resulted in a limited building envelope and have created the exceptional practical difficulty for the Applicants.
 - 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 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. The home and structures are consistent with this evolution. Likewise, the home will be placed closer to the north side of the Property in a similar layout as other homes along Canvasback Road. 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.

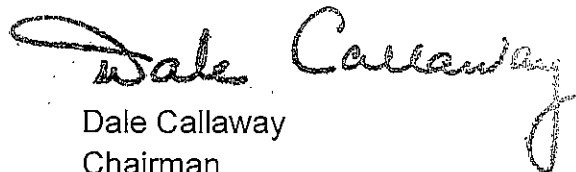
- e. The variances sought are the minimum variances necessary to afford relief and the variances requested represent the least modifications possible of the regulations at issue. The Applicants have demonstrated that the variances sought will allow the Applicants to construct a reasonably sized home 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. 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 May 16, 2019