

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: DAWN M. BRINKMAN

(Case No. 11986)

A hearing was held after due notice on July, 2017. The Board members present were: Mr. Dale Callaway, Ms. Ellen Magee, Mr. John Mills, 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 8.2 feet from the ten (10) feet side yard setback requirement on the north side for a proposed HVAC system, a variance of 4.0 feet from the ten (10) feet side yard setback requirement on the north side for a proposed dwelling, a variance of 7.0 feet from the ten (10) feet side yard setback requirement on the north side for a proposed fireplace, a variance of 4.4 feet from the ten (10) feet side yard setback requirement on the south side for a proposed shed, a variance of 4.4 feet from the ten (10) feet side yard setback requirement on the south side for a proposed porch, and a variance of 4.4 feet from the ten (10) feet side yard setback requirement on the south side for a proposed shed. This application pertains to certain real property located on the south side of Blue Teal Road approximately 1,174 feet northeast of Swann Drive (911 Address: 37042 Blue Teal Road, Selbyville); said property being identified as Sussex County Tax Map Parcel Number 5-33-12.16-487.00.

1. The Board was given copies of the Application, an aerial photograph of the Property, a survey of the Property dated November 16, 2016, and a portion of the tax map of the area.
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 Dawn Brinkman was sworn in to testify about the Application. James Fuqua, Esquire, presented the case on behalf of the Applicant and submitted exhibits for the Board to review.
4. The Board found that Mr. Fuqua stated that the Property is in the Swann Keys development.
5. The Board found that Mr. Fuqua stated that the Property borders a lagoon in the rear.
6. The Board found that Mr. Fuqua stated that the lot measures 40 feet by 100 feet and the lot size restricts the building envelope.
7. The Board found that Mr. Fuqua stated that the Applicant has owned the Property for approximately 10 years and the Applicant is proposing to replace the existing manufactured home with a new dwelling. The proposed dwelling is 24.4 feet wide by 61 feet long.
8. The Board found that Mr. Fuqua stated that the Property is unique due to its narrowness and the narrowness of the Property has created an exceptional practical difficulty for the Applicant because a modern home cannot be placed on the Property without a variance.
9. The Board found that Mr. Fuqua stated that the variances are necessary to enable reasonable use of the Property.
10. The Board found that Mr. Fuqua stated that the exceptional practical difficulty was not created by the Applicant but by the original layout of Swann Keys. Swann Keys was originally developed as manufactured home community but the community has evolved to a community with newer homes replacing the older manufactured homes.

11. The Board found that Mr. Fuqua stated that the variances requested are the minimum variances necessary to afford relief.
12. The Board found that Mr. Fuqua stated that the variances will not alter the essential character of the neighborhood. The improvements will be consistent with similar improvements in the neighborhood and numerous variances have been granted in the neighborhood due to the narrow lots. 18 nearby lots, including 4 adjacent lots, have been granted variances.
13. The Board found that Mr. Fuqua stated that the new homes in the neighborhood have increased property values in the neighborhood.
14. The Board found that Mrs. Brinkman, under oath, affirmed the statements made by Mr. Fuqua.
15. The Board found that Mrs. Brinkman testified that the existing manufactured home is almost 40 years old.
16. The Board found that Mrs. Brinkman testified that the proposed dwelling will be 1.5 stories tall.
17. The Board found that Mr. Fuqua stated that parking is an issue and that the Property will have room for only 2 parking spaces.
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 and consists of only 4,008 square feet; as is clearly shown on the survey. The narrowness and size of the Property have 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 front of the Property will be used for parking and the Applicant will place the dwelling away from the front property line to provide off-street parking spaces. 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 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 a narrow and 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.

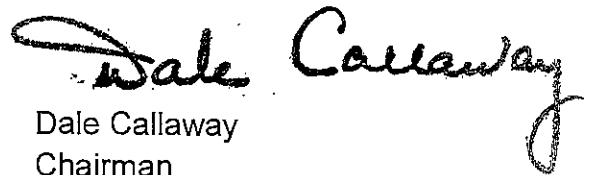
- d. The variances will not alter the essential character of the neighborhood nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare. The testimony confirms that the proposed dwelling will be aesthetically pleasing and 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. 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 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, Ms. Ellen Magee, Mr. John Mills, and Mr. Brent Workman. No Board Member voted against the Motion to approve the variance application. 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 below becomes void.

Date August 22, 2017