

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: DONALD BRODERICK, II

(Case No. 12075)

A hearing was held after due notice on December 18, 2017. The Board members present were: Mr. Dale Callaway, Ms. Ellen Magee, Mr. Bruce Mears, 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 3.5 feet from the ten (10) feet side yard setback requirement on the north side and a variance of 3.2 feet from the ten (10) feet side yard setback requirement on the south side for a proposed dwelling. This application pertains to certain real property located on the west side of Swann Drive, approximately 1,000 feet northeast of the intersection of Blue Teal Road and Swann Drive (911 Address: 37831 Swann Drive, Selbyville); said property being identified as Sussex County Tax Map Parcel Number 5-33-12.16-514.00.

1. The Board was given copies of the Application, photographs of nearby homes, an aerial photograph of the Property, a manufactured home placement permit, a site plan of the Property dated November 7, 2017, 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 Donald Broderick and Michael Deatrick were sworn in to testify about the Application and submitted pictures for the Board to review.
4. The Board found that Mr. Broderick testified that the Property is unique and has a small lot size. The Property is located in Swann Keys and measures only 40 feet wide.
5. The Board found that Mr. Broderick testified that the Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code.
6. The Board found that Mr. Broderick testified that the Applicant did not create the exceptional practical difficulty and the variances will not alter the essential character of the neighborhood.
7. The Board found that Mr. Broderick testified that similar variances have been granted in the neighborhood.
8. The Board found that Mr. Broderick testified that the variances requested are the minimum variances necessary to afford relief.
9. The Board found that Mr. Broderick testified that the dwelling will be a single-story, double-wide manufactured home. The dwelling will be set above the flood plain.
10. The Board found that Mr. Broderick testified that the dwelling will measure 26.7 feet wide but the dwelling will measure 28 feet wide with the eaves.
11. The Board found that Mr. Dietrick testified that the single-wide manufactured home on the site will be removed. The existing dwelling is a 1964 model.
12. The Board found that Mr. Broderick testified that there is a porch which is part of the dwelling. The dwelling will have steps from the front and rear of the home but there will be no steps to the sides of the home. The steps and HVAC system will be placed within the building envelope.
13. The Board found that Mr. Dietrick testified that he spoke with his neighbors and they support the Application

14. The Board found that no parties appeared in support of or in opposition to the Application.
15. 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 is forty (40) feet wide and consists of only 3,939 square feet; as is clearly shown on the survey. Additionally, the Property is located adjacent to a lagoon and the home must be elevated above the flood plain. These unique physical conditions have created an exceptional practical difficulty for the Applicant by creating an unusual and limited building envelope.
 - 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 manufactured home park and the lot is small and narrow. The Applicant seeks to construct a single-story, double-wide manufactured home 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 Applicant to place a dwelling on the Property. The Board is convinced that the size, shape, and location of the home 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. The difficulty created by the small building envelope is exacerbated by the fact that the Property is located in a flood plain. Ultimately, 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 home will replace an existing manufactured home that is over 50 years old. 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. Evidence was also presented that similar variances have been granted in the neighborhood.
 - 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 place a reasonably sized home on the Property. The Applicant has also directed that the stairs and HVAC equipment be placed in the front and rear yards thereby limiting additional encroachment into the side yards.

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. Bruce Mears, Mr. John Mills, 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 February 20, 2018.