

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: DONALD W. CHAPMAN & NORMA M. CHAPMAN

(Case No. 12095)

A hearing was held after due notice on February 5, 2018. 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 front yard and side yard setback requirements.

Findings of Fact

The Board found that the Applicants are seeking a variance of 0.4 feet from the ten (10) feet side yard setback requirement on the north side for an existing deck, a variance of 0.6 feet from the ten (10) feet side yard setback requirement on the north side for an existing dwelling, a variance of 1.6 feet from the ten (10) feet front yard setback for an existing shed, a variance of 1.9 feet from the ten (10) feet front yard setback for an existing shed, a variance of 5.4 feet from the ten (10) feet front yard setback for an existing ramp, and a variance of 5.6 feet from the ten (10) feet front yard setback for an existing ramp. This application pertains to certain real property located on the west side of Laws Point Road, approximately 2,107.54 feet from the intersection of Swann Point and Laws Point Road (911 Address: 37035 Laws Point Road, Selbyville); said property being identified as Sussex County Tax Map Parcel Number 5-33-12.16-259.00.

1. The Board was given copies of the Application, an aerial photograph of the Property, a survey of the Property dated November 6, 2017, a deed to the Property, Certificates of Compliance, 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 Norma Chapman was sworn in to testify about the Application. Ray Tomasetti, Esquire, presented the case on behalf of the Applicants and submitted exhibits into the record for the Board to review. The exhibits included photographs and a certificate of compliance for the deck and shed.
4. The Board found that Mr. Tomasetti stated that the Property is located in Swann Keys.
5. The Board found that Mr. Tomasetti stated that the Applicants purchased the Property in 1999. A manufactured home was located on the Property at that time.
6. The Board found that Mr. Tomasetti stated that, in 2008, the Applicants engaged a manufactured home contractor to remove the manufactured home and place a new one on the site. A Certificate of Compliance was issued for the home.
7. The Board found that Mr. Tomasetti stated that the Applicants later retained contractors to construct the deck on the rear of the home and to place the shed on the Property.
8. The Board found that Mr. Tomasetti stated that there is an asphalt area between the front property lines and the adjacent Laws Point Road and this asphalt area has created confusion in the neighborhood about the location of front property lines.
9. The Board found that Mr. Tomasetti stated that that no variances are needed on the south side of the Property and the encroachments on the north side of the Property are nominal encroachments.
10. The Board found that Mr. Tomasetti stated that the encroachments were discovered when the Applicants obtained a survey as part of the process of selling the Property.

11. The Board found that Mr. Tomasetti stated that the shed is located in a similar location as other sheds along Laws Point Road.
12. The Board found that Mr. Tomasetti stated that the Property is unique because approximately 21 feet of the rear of the Property is located in the lagoon and the building envelope is small.
13. The Board found that Mr. Tomasetti stated that the uniqueness of the Property has created an exceptional practical difficulty and the Property cannot be developed in strict conformity with the Sussex County Zoning Code.
14. The Board found that Mr. Tomasetti stated that the Applicants relied upon licensed contractors to erect these structures in compliance with the Code and the Applicants obtained building permits and Certificates of Compliance for all structures.
15. The Board found that Mr. Tomasetti stated that the variances will not alter the essential character of the neighborhood.
16. The Board found that Mr. Tomasetti stated that the variances requested are the minimum variances necessary to afford relief.
17. The Board found that Mrs. Chapman affirmed that the statements made by Mr. Tomasetti as true and correct.
18. The Board found that Mrs. Chapman testified that she has received no complaints from neighbors.
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 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 fifty (50) feet wide and consists of only 5,500 square feet; as is clearly shown on the survey. Additionally, a significant portion of the rear of the Property is located in a lagoon; thereby greatly limiting an already small building envelope. These unique physical conditions have created an exceptional practical difficulty for the Applicants by creating an unusual and limited building envelope for the Applicants.
 - 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 seek to retain the home, deck, shed, and ramp 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 home, deck, shed, and ramp to remain 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 and pictures 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. Furthermore, the rear of the Property, which is in the lagoon, has exacerbated an already difficulty situation for the Applicants. Ultimately, these unique physical conditions have resulted in a limited building envelope and have created the exceptional practical difficulty for the Applicant. The Board also notes that the Applicants did not place these

structures on the Property. Those structures were placed on the lot by contractors who obtained certificates of compliance indicating that they complied with the Sussex County Zoning Code only for the Applicants to later discover the error.

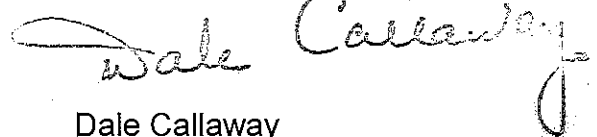
- d. The variances will not alter the essential character of the neighborhood nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare. The home, deck, shed, and ramp have been on the Property for nearly ten (10) years and, despite their longstanding location and notice to neighbors, 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. This lack of evidence is telling since the Board would expect some evidence if the structures had altered the essential character of the neighborhood. The Board notes that the pictures indicate that other structures in the neighborhood are similarly situated and the Applicants have received no complaints about the placement of the home, deck, shed, and ramp. The Board also notes that the variances for the dwelling and deck are so small that they are unlikely to be noticed by neighbors.
- 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 retain a reasonably sized home, deck, shed, and ramp on the lot and those structures are consistent with the neighborhood. No additions or modifications to those structures are proposed.

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 March 20, 2018