

**BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY**

**IN RE: PAUL RUYTER & MARY RUYTER**

**(Case No. 12143)**

A hearing was held after due notice on May 21, 2018. The Board members present were: Mr. Dale Callaway, Mr. Bruce Mears, Ms. Ellen Magee, Mr. John Mills, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for a variance from the side yard setback for a proposed structure.

Findings of Fact

The Board found that the Applicants are seeking a variance of 3.4 feet from the five (5) feet side yard setback requirement on the south side for a proposed HVAC system. This application pertains to certain real property located on the west side of Blue Teal Road, approximately 465 feet north of Swann Drive (911 Address: 37003 Blue Teal Road, Selbyville); said property being identified as Sussex County Tax Map Parcel Number 5-33-12.16-413.00.

1. The Board was given copies of the Application, a building permit application, a survey of the Property dated February 16, 2018, an aerial photograph of the Property, 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 Paul Ruyter and Mary Ruyter were sworn in to testify about the Application. Jim Fuqua, Esquire, presented the Application on behalf of the Applicants. Mr. Fuqua submitted exhibits to the Board.
4. The Board found that Mr. Fuqua stated that the Property is located in Swann Keys and is zoned General Residential.
5. The Board found that Mr. Fuqua stated that the Property is unique because it is very narrow. The Property measures 40 feet wide.
6. The Board found that Mr. Fuqua stated that the Property cannot be reasonably developed without a variance. After the Applicants filed for the variance, the Sussex County Zoning Code was amended and the amendments to the Code eliminated most of the variances needed. The only variance left is needed for the HVAC system.
7. The Board found that Mr. Fuqua stated that the HVAC is 3.5 feet long and will be located in the side yard. Only a small portion of the HVAC system will be located within the setback area.
8. The Board found that Mr. Fuqua stated that the exceptional practical difficulty was not created by the Applicants.
9. The Board found that Mr. Fuqua stated that there are newer homes in the neighborhood.
10. The Board found that Mr. Fuqua stated that the variance will not alter the essential character of the neighborhood and there are neighbors with similar variances for HVAC systems. There have been variances granted on four properties located across the street.
11. The Board found that Mr. and Mrs. Ruyter affirmed the statements made by Mr. Fuqua as true and correct.
12. The Board found that Mr. Fuqua stated that the HVAC system cannot be moved to the other side of the lot.

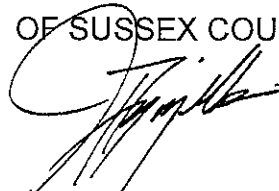
13. The Board found that no parties appeared in support of or in opposition to the Application.
14. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, which the Board found credible, persuasive, and un rebutted, the Board determined that 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 unique due to its size and shape. The Property is quite small and narrow as evidenced by the survey. The Property is only 40 feet wide by 102.2 feet deep and consists of 4,052 square feet. The unique characteristics of this Property limit the buildable area available to the Applicants and have created an exceptional practical difficulty for the Applicants who seek to construct an HVAC system on the lot.
  - b. Due to the uniqueness of the lot, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property has a unique size and the buildable area thereof is limited due to its size and shape. The Applicants seek to construct a home with an HVAC system of reasonable size but are unable to do so without violating the Sussex County Zoning Code. The Board is convinced that the variance is necessary to enable the reasonable use of the Property as the variance will allow the HVAC system to be placed on the Property. The Board is convinced that the shape and location of the HVAC system are also reasonable, which is confirmed when reviewing the survey provided by the Applicants.
  - c. The exceptional practical difficulty was not created by the Applicants. The Applicants did not create the unusual size and shape of the Property. Swann Keys was originally developed as a community for smaller, singlewide manufactured homes with small lot sizes. The unique lot size has resulted in a limited building envelope on the Property and the small building envelope has created the exceptional practical difficulty. The unique characteristics of the Property are clear when reviewing the survey. The Board is convinced that the exceptional practical difficulty was not created by the Applicants but was created by the lot's unique characteristics.
  - d. The variance 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 Board is convinced that the HVAC system will have no effect on the character of the neighborhood. The HVAC system will be located in a similar location to other HVAC systems in the neighborhood and variances have been granted for nearby properties as well. No evidence was presented that the variance would somehow alter the essential character of the neighborhood.
  - e. The variance sought is the minimum variance necessary to afford relief and the variance requested represent the least modification possible of the regulation at issue. The Applicants have demonstrated that the variance sought will allow the Applicants to place a reasonably sized HVAC system on the Property. The Board is convinced that the Applicants tried to fit the HVAC system within the building envelope but were constrained by the narrow width of the Property and the small size of the lot. In an effort to reduce the side yard setback encroachment, the HVAC system was turned so that the longer side of the system runs parallel to the house.

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



John Mills  
Chairman

If the use is not established within two (2) years from the date below the application becomes void.

Date August 7, 2018.