

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: KEVIN WILSON & PAMELA WILSON

(Case No. 12224)

A hearing was held after due notice on November 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 side yard setback for proposed structures.

Findings of Fact

The Board found that the Applicants are seeking a variance of 1.4 feet from the side yard setback requirement of 5 feet on the south side for proposed steps and a variance of 1.6 feet from the side yard setback requirement of 5 feet on the south side for proposed HVAC equipment. This application pertains to certain real property located on the east side of Laws Point Road approximately 1,947 feet north of Swann Drive (911 Address: 37028 Laws Point Road, Selbyville) said property being identified as Sussex County Tax Map Parcel Number 5-33-12.16-280.00.

1. The Board was given copies of the Application, a site plan dated September 12, 2018, a revised site plan dated September 27, 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 the Application or in opposition to the Application.
3. The Board found that Gil Fleming was sworn in to testify about the Application.
4. The Board found that Mr. Fleming testified that the Applicants wish to replace the old singlewide home with a doublewide home and the Applicants want to center the home on the lot. Mr. Fleming, however, testified that the home could be placed on the lot without a variance but it would not be centered. The off-centering of the house would not be noticeable though.
5. The Board found that Mr. Fleming testified that the Property is located in Swann Keys and that the Property is unique because it is extremely narrow.
6. The Board found that Mr. Fleming testified that the need for variances was not created by the Applicants and that the variances will not affect the character of the neighborhood as many of the neighbors have also upgraded to a doublewide home.
7. The Board found that Mr. Fleming testified that the HVAC unit is located by the furnace area and an HVAC system in the front yard is not preferred.
8. The Board found that Mr. Fleming testified that the variances requested are the minimum variances to afford relief.
9. The Board found that Mr. Fleming testified that the house will be raised to be outside the flood plain and that there will be sufficient room for parking.
10. The Board found that no parties appeared in support of or in opposition to the Application.
11. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, which the Board weighed and considered, the Board determined that the application failed to meet the standards for granting a variance. The findings below further support the Board's decision to deny the Application.
 - a. One of the elements for granting a variance is that the Applicants must demonstrate that the Property cannot be developed in strict conformity with the Sussex County Zoning Code and that the variances are necessary to

enable the reasonable use of the Property. It is clear from the survey dated September 27, 2018, however, that the Property can easily be developed in strict conformity with the Sussex County Zoning Code. The Applicants seek, at most, a variance of 1.6 feet on the south side to allow for certain improvements related to their home. On the north side of the home, the Applicants have 1.7 feet of room before they reach the side property line. It is thus clear that the Applicants can place these proposed structures on the lot in compliance with the Sussex County Zoning Code. Since no variance is needed as noted above, the Applicants have failed to meet this element and the variances must be denied.

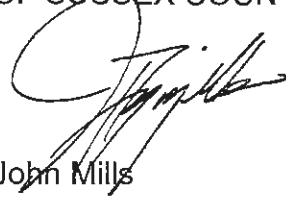
- b. The Board finds that the Applicants are creating their own exceptional practical difficulty by proposing to construct structures which do not fit within the building envelope. The Applicants' decision to place these structures in this location is the reason for the need for a variance and has nothing to do with the size, shape, or condition of the Property. There is no unusual condition to the Property which has created this difficulty. As such, the Board was not convinced that the variance requests were the product of a *need*. Instead, the variance request appears to be the product of a *want* as the Applicants seek to build the structures as proposed for purposes of convenience, profit, and / or caprice. Since the Applicants can place a dwelling with HVAC system and steps that can comply the Sussex County Zoning Code, the need for the variance is something created by the Applicants' wants rather than an unusual physical condition relating to the Property. The need for the variance appears to be driven by the Applicants' desire as to where to place the home. The Applicants' desire to center the home on the lot is simply not a sufficient reason to encroach into the setback area; particularly since their builder testified that the off-centering of the home will not likely be noticeable. The Applicants have thus created their own exceptional practical difficulty.
- c. Additionally, the Applicants must demonstrate that the requested variances represent the minimum variances necessary to afford relief. Since no variance is actually needed in order for the Applicants to place the proposed home and related structures on the Property, it is clear to the Board that the Applicants have failed to meet this element as well and that the variance requests must be denied.

The Board denied the variance application finding that it failed to meet the standards for granting a variance.

Decision of the Board

Upon motion duly made and seconded, the variance application was denied. The Board Members in favor of the motion to deny the Application 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 deny 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 January 8, 2019.