

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: CHARLES F. SCHULTZ & SHARON M. SCHULTZ

(Case No. 12355)

A hearing was held after due notice on September 9, 2019. The Board members present were: Mr. Jeffrey Chorman, Ms. Ellen Magee, Mr. John Williamson, and Mr. Brent Workman.

Nature of the Proceedings

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

Findings of Fact

The Board found that the Applicants are seeking two variances of 2.6 feet from the five (5) feet side yard setback requirements on the south side for proposed HVAC units. This application pertains to certain real property located on the east side of Canvasback Road approximately 0.40 miles north of Swann Drive within the Swann Keys subdivision (911 Address: 37082 Canvasback Road, Selbyville) said property being identified as Sussex County Tax Map Parcel Number 5-33-12.16-369.00. After a hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a site plan of the Property dated July 8, 2019, pictures, disability permit information, 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 two letters in support of the Application and no correspondence in opposition to the Application.
3. The Board found that Charles Schultz and Sharon Schultz were sworn in to testify about the Application.
4. The Board found that Ms. Schultz testified that the Property is unique because of its uneven shape and the Property is located adjacent to a cul-de-sac. The Property is 70 feet deep on one side and 100 feet deep on the other side.
5. The Board found that Ms. Schultz testified that the Property is only 46 feet wide and is smaller than most other lots in the development.
6. The Board found that Ms. Schultz testified that the variances are necessary to enable reasonable use of the Property.
7. The Board found that Ms. Schultz testified that, due to her husband's disability, the home is designed to give as much first floor living as possible. While the house will be a two-story home, her husband can only use the first floor.
8. The Board found that Ms. Schultz testified that the propane tank cannot be buried.
9. The Board found that Ms. Schultz testified that the need for the variance was not created by the Applicants as they did not create the size of the lot and they have owned the Property for approximately 2 years.
10. The Board found that Ms. Schultz testified that others in the neighborhood have encroachments and the neighbors most affected by the request support the Application.
11. The Board found that Ms. Schultz testified that the community was a manufactured home park which is converting to single-family homes.
12. The Board found that Ms. Schultz testified that removing the 1988 manufactured home and replacing it with a custom built home will enhance the neighborhood.
13. The Board found that Ms. Schultz testified that the variances requested are the minimum variances request to allow for a HVAC system.
14. The Board found that Ms. Schultz testified that the dwelling will consist of approximately 2,400 square feet.

15. The Board found that Ms. Schultz testified that the contractor said that it would be more costly and inefficient to place the HVAC units to the rear of the house.
16. The Board found that no one appeared in support of or in opposition to the Application.
17. The Board tabled the discussion of this application until its meeting on October 7, 2019. Board Member Kevin Carson reviewed the record and the audio of the hearing prior to the discussion and vote.
18. 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 for the variances met the standards for granting a variance. The findings below further support the Board's decision to approve the Application for the variances for that structure.
 - a. The Property is unique due to its size and shape. The Property is a small lot measuring only 3,952 square feet and is exceptionally shallow on the north side thereby creating a small building envelope. The building envelope is also limited by the unusual shape of the front yard. The Property is also adjacent to a lagoon so the Applicants are reasonably limited in the building envelope to the rear as well. These unique characteristics of this Property, however, have created a limited building envelope and have created an unnecessary hardship and exceptional practical difficulty for the Applicants who seek to construct HVAC units to the side of their new house.
 - b. The unnecessary hardship and exceptional practical difficulty are not being created by the provisions of the Sussex County Zoning Code.
 - c. Due to the uniqueness of the lot, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property has unique physical characteristics and the buildable area thereof is limited due to those characteristics. The Applicants seek to place HVAC units on the lot 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 these reasonably sized structures to be placed the lot. The Board is convinced that the shape and location of these structures are also reasonable, which is confirmed when reviewing the survey provided by the Applicants.
 - d. The unnecessary hardship and exceptional practical difficulty were not created by the Applicants. The Property is exceptionally small and shallow and these conditions have resulted in a limited building envelope on the Property. These conditions have created the unnecessary hardship and exceptional practical difficulty. Furthermore, the Applicants are constrained by Mr. Schultz's disability which requires first-floor living.
 - e. 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 Board is convinced that the structures will have no effect on the character of the neighborhood. Only the HVAC units will encroach into the setback areas and the record is clear that there have been other encroachments in the neighborhood. No evidence was presented that the variances would somehow alter the essential character of the neighborhood. The neighbors most impacted have indicated their support of the Application to the Applicants.
 - f. 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 place reasonably sized HVAC

units on the Property. The Applicants were significantly constrained by the unusual conditions of the lot and by their need for first-floor living.

- g. The condition or situation of the Property and the intended use of the Property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the Sussex County Zoning Code.
- h. The approval of this variance requests also represents a reasonable accommodation to a party with a disability.

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 of the Motion to approve were Mr. Jeff Chorman, Mr. John Williamson, and Mr. Brent Workman. Dr. Kevin Carson and Ms. Ellen Magee voted against the Motion to approve the variance application.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY



Ellen M. Magee
Chair

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

Date December 3, 2019