

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

**IN RE: WILLIAM J. SMITH, JR.**

**(Case No. 12394)**

A hearing was held after due notice on December 16, 2019. The Board members present were: Dr. Kevin Carson, Mr. Jeff Chorman, Ms. Ellen Magee, Mr. John Williamson, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for variances from the side yard setback requirements for existing structures.

Findings of Fact

The Board found that the Applicant is seeking variances of 2 feet from the five (5) feet side yard setback requirement on the south side for existing steps, landing, and HVAC equipment on an elevated platform. This application pertains to certain real property located on the west side of the north end of Pintail Drive within the Swann Keys subdivision (911 Address: 37057 Pintail Drive, Selbyville) said property being identified as Sussex County Tax Map Parcel Number 5-33-12.16-32.00. After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a drawing of the Property dated October 18, 2019, photographs, a survey of the Property, 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 William Smith was sworn in to testify about the Application.
4. The Board found that Mr. Smith testified that the Property is located in Swann Keys.
5. The Board found that Mr. Smith testified that the Property is unique as it is pie-shaped and adjoins water on two sides. He also testified that the front of the Property has a cutout for the turnaround and that the cul-de-sac creates challenges in developing the lot.
6. The Board found that Mr. Smith testified that, due to the limited building space and the placement of the home, a side yard variance is necessary to place the steps, landing, and HVAC equipment.
7. The Board found that Mr. Smith testified that the house is located far from the road as compared to other homes in the neighborhood.
8. The Board found that Mr. Smith testified that the variances will not affect the character of the neighborhood as many homes have similar setback issues.
9. The Board found that Mr. Smith testified that the house is 7 feet from the side yard property line.
10. The Board found that Mr. Smith testified that there is a crawlspace under the home.
11. The Board found that Mr. Smith testified that the home is 2 stories tall and is under construction but the builder realized the need for the variance. The foundation has been poured.
12. The Board found that Mr. Smith testified that lot floods at times due to large storms.
13. The Board found that Mr. Smith testified that the steps cannot be moved because there is a door on that side of the house.
14. The Board found that Mr. Smith testified that placing the HVAC equipment on the south side of the home will help protect it from the elements. He is concerned about spray from the water deteriorating the HVAC system.
15. The Board found that Mr. Smith testified that the odd shape of the lot and the community turnaround were not created by the Applicant.

16. The Board found that Mr. Smith testified that there are no complaints from neighbors and that he spoke with the neighbor on Lot 37 and he is okay with the variance requests.
17. The Board found that Mr. Smith testified that the variances requested are the minimum variances necessary to afford relief.
18. The Board found that no parties appeared in support of or in opposition to the Application.
19. 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 unrebutted, 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 those structures.
  - a. The Property is unique due to its shape, size, and flooding concerns. The Property consists of only 7,009 feet and a large portion of the rear yard is located in a lagoon. The Property also has a unique shape as the front yard is adjacent to a cul-de-sac. Consequently, a significant portion of the front yard is likely unbuildable due to the unique shape of the front yard. The Property is further limited in its building envelope due to the fact that it is adjacent to water on 2 sides. This proximity to water necessitates that mechanical systems, such as the HVAC, be located away from the water. Consequently, the building envelope is quite limited. These conditions have thus created an unnecessary hardship and exceptional practical difficulty for the Applicant who seeks to retain an existing steps, landing, and HVAC system on the lot.
  - 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 Applicant seeks to retain an existing steps, landing, and HVAC system on the lot 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 these reasonably sized structures to remain on the lot. The Board is convinced that the shape and location of these existing structures are also reasonable, which is confirmed when reviewing the survey provided by the Applicant. Notably, the location of the HVAC system will protect it from the water and the steps will be adjacent to a door to the home.
  - d. The unnecessary hardship and exceptional practical difficulty were not created by the Applicant. The Property was created by a prior owner and the Applicant did not create the unusual size, shape, or proximity to water of the lot. These conditions are clear when reviewing the survey provided by the Applicant. These conditions have created a limited building envelope on the Property and the unnecessary hardship and exceptional practical difficulty.
  - 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 existing structures will have no effect on the character of the neighborhood. The neighbor most affected by the encroachment has not contested the Application and the record is clear that there are other encroaching structures on nearby properties. No evidence was presented



that the variances would somehow alter the essential character of the neighborhood or be detrimental to the public welfare.

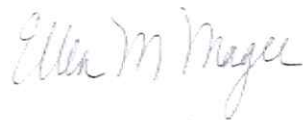
- f. The variances sought are the minimum variances necessary to afford relief and the variances requested represent the least modifications possible of the regulations at issue. The Applicant has demonstrated that the variances sought will allow the Applicant to retain the existing structures on the lot. No additions or modifications to those structures are proposed.
- 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.

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 Dr. Kevin Carson, Mr. Jeff Chorman, Ms. Ellen Magee, Mr. John Williamson, and Mr. Brent Workman. No Board Member 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 February 18, 2020.