

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

**IN RE: JOHN LEPKOWSKI**

**(Case No. 12547)**

A hearing was held after due notice on April 19, 2021. The Board members present were: Dr. Kevin Carson, Mr. Jeff Chorman, Mr. John T. Hastings, Mr. John Williamson, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for variances from the side yard setback requirement for existing and proposed structures.

Findings of Fact

The Board found that the Applicant is requesting a variance of 3.3 feet from the five (5) foot side yard setback requirement for an existing HVAC unit on the north side and a variance of 2.2 feet from the five (5) foot side yard setback requirement for existing landing with steps on the south side. This property located on the east side of Blue Teal Road within the Swann Keys Subdivision (911 Address: 37000 Blue Teal Road, Selbyville) said property being identified as Sussex County Tax Map Parcel Number: 5-33-12.20-46.00. After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a survey of the Property dated January 3, 2020, 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 John Lepkowski was sworn in to testify about the Application.
4. The Board found that Mr. Lepkowski testified that, when he submitted the house plans for permitting, he was unaware that variances would be needed. This issue arose when he sought a certificate of compliance.
5. The Board found that Mr. Lepkowski testified that the lot is unique as it is only 40 feet wide and that the Property cannot be otherwise developed because of the unique conditions of the lot.
6. The Board found that Mr. Lepkowski testified that the building permit was approved for the house but a Certificate of Occupancy has not been issued. He noted that the building permit was obtained by his contractor.
7. The Board found that Mr. Lepkowski testified that the steps cannot be moved because they are the secondary egress from the dwelling.
8. The Board found that Mr. Lepkowski testified that the HVAC unit cannot be moved as the only other realistic location for the system is the driveway.
9. The Board found that Mr. Lepkowski testified that the variances will not alter the essential character of the neighborhood as the home is similar to other homes in the community.
10. The Board found that Mr. Lepkowski testified that this development was developed as a manufactured home park where homes have since been converted to stick built homes.
11. The Board found that Mr. Lepkowski testified that other homes in the vicinity have had similar variances granted.
12. The Board found that Mr. Lepkowski testified that these variances are the minimum variances necessary to afford relief as the steps and HVAC system cannot be moved.
13. The Board found that Mr. Lepkowski testified that this is a single-story dwelling built in 2020 on a block foundation.

14. The Board found that Mr. Lepkowski testified that the home is elevated due to Hurricane Sandy but he cannot put these structures under the house.
15. The Board found that Mr. Lepkowski testified that there have been no complaints from neighbors and two neighbors offered to send letters of support.
16. The Board found that no one appeared in support of or in opposition to the Application.
17. 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 variance met the standards for granting a variance. The findings below further support the Board's decision to approve the Application for the variance.
  - a. The Property is unique due to its size, shape, and development. The Property is a small lot measuring only 4,000 square feet and is only 40 feet wide. While the lot is afforded benefits under the small lot ordinance, thereby reducing its setbacks, the Applicant's builder made a mistake in the construction of the house. The house complies with the setback requirements but the steps, landing, and HVAC do not. Due to the layout of the house and the uniqueness of the Property, there is no other place where the HVAC unit, steps, and landing can be located. These unique characteristics of this Property have created a limited building envelope and have created an unnecessary hardship and exceptional practical difficulty for the Applicant who seeks to retain an HVAC unit and steps with a landing 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 development and the buildable area thereof is limited due to those characteristics. The Applicant seeks to retain existing structures 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 the structures are also reasonable, which is confirmed when reviewing the survey provided by the Applicant. The Board notes that the steps and landing provide a means to enter and exit the home and the HVAC provides a cooling system for the home. The Board also notes that the structures are not large and the square footage of the actual encroachments is limited.
  - d. The unnecessary hardship and exceptional practical difficulty were not created by the Applicant. There was no evidence that the Applicants created the size or shape of the lot. The Property is exceptionally small and narrow and these conditions have resulted in a limited building envelope on the Property. The limited building envelope was exacerbated by the error by the builder in locating the encroaching structures. These conditions have created the unnecessary hardship and exceptional practical difficulty. Furthermore, the Applicant is constrained by the location of the existing residence which also presents challenges on where the HVAC unit, steps, and landing can be located on the lot.
  - 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 encroaching structures will have no effect on the character of the neighborhood. No complaints have been noted to the

Applicant. The Board notes that the Applicant testified that neighbors have indicated support of the Application and no evidence was presented that the variances would somehow alter the essential character of the neighborhood.

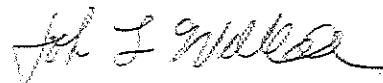
- f. The variances sought are the minimum variances necessary to afford relief and the variances requested represent the least modifications possible of the regulation at issue. The Applicant has demonstrated that the variances sought will allow the Applicant to retain reasonably sized structures on the Property. No additions or modifications to the structures are proposed. The Board also notes that the steps and landing run parallel to the house so the encroachment is limited due the layout of those structures.
- 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 the variance were Dr. Kevin Carson, Mr. Jeffrey Chorman, Mr. Travis Hastings, 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



John Williamson  
Chair

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

Date June 21, 2021