

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

**IN RE: SHIRLEY H. ROZANSKI**

**(Case No. 12592)**

A hearing was held after due notice on August 2, 2021. The Board members present were: Dr. Kevin Carson, Mr. Jeff Chorman, Mr. John T. Hastings, Mr. Jordan Warfel, and Mr. John Williamson.

Nature of the Proceedings

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

Findings of Fact

The Board found that the Applicant is requesting variances of 2.9 feet from the five (5) feet side yard setback requirement on the north side for a proposed HVAC unit, landing, and steps. This property is located on the east side of Laws Point Road within the Swann Keys Subdivision (911 Address: 37020 Laws Point Road, Selbyville) said property being identified as Sussex County Tax Map Parcel Number 5-33-12.16-284.00. After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a survey dated June 3, 2016, an older survey of the Property, letters of no objection to the Application, a survey of the Property dated June 28, 2021, a letter withdrawing support of the Application, photographs, a letter of support, 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 and one letter in opposition to the Application.
3. The Board found that Diane Barrett and Paul Barrett were sworn in to testify about the Application and they submitted exhibits to the Board
4. The Board found that Ms. Barrett testified that she is representing her mother, Shirley Rozanski who was unable to attend the hearing as she is 88 years old and recently had a fall that led her to the hospital.
5. The Board found that Ms. Barrett testified that the request is to place steps and a heat pump in the setback area for three reasons: 1) safety, 2) practicality, and 3) efficiency.
6. The Board found that Ms. Barrett testified that the Property is unique because it is a small 40 foot wide property and that the Property cannot otherwise be developed.
7. The Board found that Ms. Barrett testified that, when the Property was purchased in 2003, there was a single-wide manufactured home on the Property.
8. The Board found that Ms. Barrett testified that the new steps and heat pump will be placed in the same location as the previous ones and that the proposed steps and heat pump will have a smaller footprint than the prior ones.
9. The Board found that Ms. Barrett testified that the house was not parallel with the property line.
10. The Board found that Ms. Barrett testified that the old steps came straight out and ended on the adjacent property but the new steps will be contained within the subject property.
11. The Board found that Ms. Barrett testified that the steps are needed for safety reasons but the landing will be smaller than the prior landing.
12. The Board found that Ms. Barrett testified that there were two letters of support submitted from neighbors but one neighbor has since rescinded her support.
13. The Board found that Ms. Barrett testified that the main purpose of this exit is for emergency and not for daily use.

14. The Board found that Ms. Barrett testified that the heat pump cannot be placed on the opposite side of the house would create a safety issue for the Applicant. She noted that the heat pump cannot be placed in the rear of the home because of flooding that comes over the bulkhead. She also testified that there is an electrical panel nearby as well.
15. The Board found that Ms. Barrett testified that the Property is located in Swann Keys.
16. The Board found that Ms. Barrett testified that, before the Applicant purchased the home, the representatives from the retailer assured the Applicant that the dwelling, steps, and heat pump would fit within setbacks.
17. The Board found that Ms. Barrett testified that the Applicant relied on the expertise of professionals and did not create the exceptional practical difficulty.
18. The Board found that Mr. Barrett testified that he thinks that the sales representative from Midway Mobile Home Sales thought that a variance would not be required because the steps and heat pump are smaller than the former steps and heat pump. He thinks that the builder made a mistake.
19. The Board found that Ms. Barrett testified that the requests will not alter the essential character of the neighborhood but will create a better fit as most homes have the heat pump on this side of the homes.
20. The Board found that Ms. Barrett testified that the variances are the minimum variances so that the steps and heat pump will use as minimum space as required by code.
21. The Board found that Ms. Barrett testified that the requests are for practical and safety purposes only.
22. The Board found that Mr. Barrett testified that the Property floods.
23. The Board found that Judith Humphreys was sworn in to give testimony in opposition to the Application and submitted exhibits to the Board members.
24. The Board found that Ms. Humphreys testified that she was unaware of the variance needed for the HVAC unit.
25. The Board found that Ms. Humphreys testified that the house could have been moved over and centered on the lot.
26. The Board found that Ms. Humphreys testified that she does not like what she sees on the subject property.
27. The Board found that Ms. Humphreys testified that the Applicant needs the steps.
28. The Board found that Ms. Humphreys testified that she built the first second story house in Swann Keys and rents it out and she believes that the variances will affect the value of her property.
29. The Board found that Ms. Humphreys testified that she has privacy concerns.
30. The Board found that Ms. Humphreys testified that she was unaware the prior steps and HVAC encroached into the setback area.
31. The Board found that Mr. Barrett testified that, if the house was moved over towards the south, then a variance would be necessary for the south side of the Property.
32. The Board found that Ms. Barrett testified that she would have preferred the house be centered on the lot also.
33. The Board found that no one appeared in support of and one person appeared in opposition to the Application.
34. 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 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 lot is a small and narrow lot measuring only 40 feet wide by 95.3 feet deep. The Property is developed with a house which was not centered on the lot by a builder who assured the Applicant that the house and related structures



would comply with the setback requirements. The Property is also unique because the rear of the lot is subject to flooding which renders a portion of the building envelope unusable. These conditions have created a limited and small building envelope and these conditions have created an unnecessary hardship and exceptional practical difficulty for the Applicant who seek to place an HVAC unit, steps, and landing on the site.

- 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 and situation, 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. Moreover, the Applicant is unable to reasonably use the Property because access to the home is needed and the HVAC unit needs to be located away from the water. The Applicant is elderly and reasonable access is needed for the unit. The Applicant seeks to construct an HVAC unit, steps, and landing on the Property 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 those structures to be placed on the lot. The Board is convinced that the shape and location of the HVAC unit, steps, and landing are also reasonable, which is confirmed when reviewing the survey provided by the Applicant.
- d. The unnecessary hardship and exceptional practical difficulty were not created by the Applicant. As previously stated, the Property has unique conditions and these conditions have resulted in a limited building envelope on the Property. The Applicant also did not place the home on the lot. Rather, the Applicant relied on representations from its builder that no variances would be needed but those representations were incorrect. These conditions and the builder error have created 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 HVAC unit, steps, and landing will have no effect on the character of the neighborhood. Letters of support were submitted from some neighbors and, while one neighbor submitted opposition, there was no substantial evidence that the HVAC unit, steps, and landing would somehow alter the essential character of the neighborhood. The opposing neighbor admitted that she believed the steps were needed and she was unaware that the HVAC needed a variance. The Board notes that the structures encroach less than the prior structures on the lot and thereby reduce the degree of non-conformity. By directing the steps to run parallel to the side lot line rather than perpendicular, the Applicant has minimized the impact of the steps on neighboring lands.
- 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 construct HVAC unit, steps, and landing on the Property. Due to the conditions of the Property and the builder error, there is no other location where these structures can be located. Moreover, the Applicant is directing the steps to run parallel to the side lot line rather than perpendicular which helps reduce the need for the variances. These improvements will allow the Applicant to functionally use her home.

- 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 with conditions were Dr. Kevin Carson, Mr. Jeffrey Chorman, Mr. Travis Hastings, Mr. Jordan Warfel, and Mr. John Williamson. 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 October 18, 2021.