

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: PINTAIL ESTATES, LLC

(Case No. 12705)

A hearing was held after due notice on June 27, 2022. The Board members present were: Dr. Kevin Carson, Mr. Jeffrey 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 a propane tank and HVAC unit.

Findings of Fact

The Board found that the Applicant is requesting the following variances:

1. A variance of 2 feet from the five (5) feet side yard setback requirement on the north side for an HVAC system; and
2. A variance of 1.5 feet from the five (5) feet side yard setback requirement on the north side for propane tanks.

This property is located on the southwest side of Pintail Drive within the Swann Keys Subdivision (911 Address: 36953 Pintail Drive, Selbyville) said property being identified as Sussex County Tax Map Parcel Number 533-12.16-7.00 ("the Property"). After a public 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 October 19, 2021, 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 Aaron Jackson and Josh Wagner were sworn in to testify about the Application.
4. The Board found that Mr. Wagner testified that the Applicants seek the variances because they replaced their grandmother's house and need the variances for propane tanks and an HVAC unit for the home. He noted that the house was placed in the exact location as the previous house and that the propane tanks and HVAC were placed in the same location as the prior systems.
5. The Board found that Mr. Wagner testified that the home will be used by their grandmother and they have to place a handicap ramp for their grandmother. He noted that, due to the code, the ramp will utilize a large part of the yard.
6. The Board found that Mr. Wagner testified that there are plans for an enclosed deck off the rear of the house.
7. The Board found that Mr. Wagner testified that they would need homeowner association approval to place the HVAC unit and propane tank at the front of the Property. He also noted that they avoid placing things to the rear of the lot due to the slope of the Property.
8. The Board found that Mr. Wagner testified that there could be potential for flooding issues at the rear of the Property.
9. The Board found that Mr. Wagner testified that they secured the propane tank and HVAC based on the inspector's instructions.
10. The Board found that Mr. Wagner testified that the ramp will go toward the lagoon and then back towards the front of the Property in order to meet County Code.

11. The Board found that Mr. Wagner testified that the contractor was Superior Homes and they relied on the contractor to place the structures in compliance with the Code.
12. The Board found that Mr. Wagner testified that the home is a double-wide manufactured home.
13. The Board found that Mr. Wagner testified that both adjacent neighbors are okay with the placement and there have been no complaints about the HVAC or propane tank even prior to the replacements.
14. The Board found that Mr. Wagner testified that the error was not discovered until the inspector came to complete the manufactured home tie down inspection.
15. The Board found that Mr. Wagner testified that they cannot place the propane tanks on the left side of the dwelling as it is all windows and code does not allow it.
16. The Board found that Mr. Jackson testified that their grandparents purchased the Property in 1981 or 1982.
17. The Board found that Mr. Jackson testified that his father has passed away and that a sibling of his father also passed. He noted that they have an aunt with no children and that three (3) out of the five (5) grandchildren got together to create an LLC for their grandmother's property.
18. The Board found that Mr. Jackson testified that they tore down the old home which was falling apart to construct the new home for their grandmother and aunt to live in.
19. The Board found that Mr. Jackson testified that the builders placed everything in the previous existing footprint and the issues came up upon final inspection by the County.
20. The Board found that Mr. Jackson testified that the left side of the property is going to be filled with a handicap ramp.
21. The Board found that Mr. Jackson testified that they were under the impression that Superior Homes was taking care of what was needed in placing the new home but Superior Homes has not assisted them with correcting the error.
22. The Board found that no one appeared in support of or in opposition to the Application.
23. 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 met the standards for granting a variance. The findings below further support the Board's decision to approve the Application.
 - a. The Property is unique due to the size and conditions of the lot. The lot is a small lot measuring 50 feet wide by 110 feet deep and the rear of the yard slopes and a large portion of the rear yard is in a lagoon. These conditions have created an unusually small and limited building envelope. The Property was previously developed with a house that was recently replaced. The Property will be used for the Applicants' grandmother and she needs a handicap ramp to access the home. Due to these conditions, the house was placed towards the north side of the lot and complies with the Code but the propane tanks and HVAC unit servicing the unit slightly encroach into the setback area. The unique conditions of the lot, the need for a handicap ramp, and the placement error by the builder have created an unnecessary hardship and exceptional practical difficulty for the Applicant who seeks to retain an existing HVAC unit and propane tanks 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 Property and the situation, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Applicant seeks to retain an existing HVAC unit and propane tanks on the lot but is unable to do so while complying with the Sussex County Zoning Code. The Board is thus convinced that the variances are necessary to

enable the reasonable use of the Property as the variances will allow the Applicant to retain these reasonable structures on the lot. The Board is convinced that the size, shape, and location of the structures are reasonable. The Board notes that these structures are needed to reasonably heat and cool the dwelling and that, due to the unique conditions of the lot, there is no other place where those structures can reasonably be located.

- d. The unnecessary hardship and exceptional practical difficulty were not created by the Applicant. As discussed above, the Property has unique conditions which have limited the Applicant's ability to reasonably develop the Property. The Applicant did not create the unique conditions of the lot or place the house on the lot. The Board was convinced that the Applicant has not created the exceptional practical difficulty and unnecessary hardship. Furthermore, the Board is convinced that the Applicant did not come to the Property with an illegal use in mind. Rather, the Applicant is limited by the physical conditions of the Property, the need for a handicap ramp, and the error by the builder in placing the home.
- 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 variances will have no effect on the character of the neighborhood. The variances will allow the Applicant to retain an existing HVAC unit and propane tanks on the lot in a location that is similar to where a prior HVAC unit and tanks were located. The Board finds that no evidence was presented which demonstrate 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 regulation at issue. The Applicant has demonstrated that the variances sought will allow the Applicant to retain an existing HVAC unit and propane tanks on the lot. The Board notes that the Applicant was limited in where the structures could be placed due to the location of the existing house, the unique conditions of the lot, and the need for a handicap ramp. 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 the variance application 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



Jeffrey Chorman
Chair

If the use is not established within two (2)
years from the date below the application
becomes void.
Date August 15, 2022.