

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: CHARLES VAN AULEN

(Case No. 12708)

A hearing was held after due notice on June 27, 2022. 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 a variance from the side yard setback for an existing HVAC.

Findings of Fact

The Board found that the Applicant is requesting a variance of 0.6 feet from the 5 feet side yard setback requirement on the north side for an HVAC unit. This property is located on the east side of Laws Point Road within the Swann Keys Subdivision (911 Address: 36954 Laws Point Road, Selbyville) said property being identified as Sussex County Tax Map Parcel Number 533-12.16-312.03 ("the Property"). 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 March 9, 2021, two letters supporting the Application, 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 (2) letters in support of the Application and no correspondence in opposition to the Application.
3. The Board found that Mark Willey, a representative from Clayton Homes, was sworn in to testify about the Application.
4. The Board found that Mr. Willey testified that Clayton Homes placed the home at the Applicant's request and Clayton Homes replaced the Applicant's single-wide manufactured home with a double-wide manufactured home in February 2022.
5. The Board found that Mr. Willey testified that, after the home was placed, they had an as-built survey completed which showed that the HVAC system extended over the side yard setback by 0.6 feet.
6. The Board found that Mr. Willey testified that they trimmed the HVAC platform as much as they could but that was the minimum amount that they could get it to.
7. The Board found that Mr. Willey testified that the Applicant spoke to the neighbors on both sides of the Property and they were both okay with the placement of the HVAC.
8. The Board found that Mr. Willey testified that this error was unintentional and an administrative variance was applied for but did not meet the criteria.
9. The Board found that Mr. Willey testified that the survey they conducted caught this prior to the County.
10. The Board found that Mr. Willey testified that there is a two (2) car garage that extends the width of the dwelling all the way to the building restriction line facing the road.
11. The Board found that Mr. Willey testified that there is no other available location to place the HVAC unit.
12. The Board found that Mr. Willey testified that there is a lagoon to the rear of the lot so the HVAC unit cannot be placed there.
13. The Board found that Mr. Willey testified that there is a ground level patio at the rear of the Property as well.
14. The Board found that Mr. Willey testified that the Property is located in flood zone.

15. The Board found that no one appeared in support of or in opposition to the Application.
16. 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 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 shape of the lot. The lot is a small and narrow lot measuring 40 feet wide and consisting of only 4,000 square feet. The Applicant retained Clayton Homes to place a home on the lot and, while the home complies with the setback requirements, the HVAC system slightly encroaches into the setback area. The Property is in a flood zone so the HVAC cannot be relocated to the rear of the lot and the front of the Property is used for parking thereby limiting a relocation of the HVAC to that area as well. These conditions have created an unusually shaped and limited building envelope. The unique conditions of the lot and the error made by the builder in placing the home have created an unnecessary hardship and exceptional practical difficulty for the Applicant who seeks retain an existing HVAC unit.
 - 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 HVAC system on the lot but is unable to do so while complying with the Sussex County Zoning Code. The Board is thus convinced that the variance is necessary to enable the reasonable use of the Property as the variance will allow the Applicant to retain the HVAC unit on the lot. The Board is convinced that the size, shape, and location of the HVAC system are reasonable. The Board notes that there is no other location where the HVAC unit 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 and the Applicant needs the variance in order to retain the HVAC unit. The Board also notes that the Applicant reasonably relied on its builder to place the home and HVAC system in compliance with the Code only to later discover the error. The Board notes that, had the home been placed closer to the south side of the lot, it appears that the home and HVAC unit could have fit within the building envelope. The error, however, was discovered only after the home was placed.
 - e. The variance 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 variance will have no effect on the character of the neighborhood. The variance will allow the Applicant to retain the existing HVAC. Neighbors have indicated support of the Application. Moreover, the Board finds that no evidence was presented which demonstrate that the variance would somehow alter the essential character of the neighborhood

or be detrimental to the public welfare. The small size of the encroachment is also significant as the HVAC unit encroaches by less than 1 foot.

- f. The variance sought is the minimum variance necessary to afford relief and the variance requested represents the least modification possible of the regulation at issue. The Applicant has demonstrated that the variance sought will allow the Applicant to retain an HVAC system on the Property. No additions or modifications to the HVAC system are proposed. The Board notes that the Applicant was limited in where the structures could be placed due to the location of the existing house and the Property's unique conditions and the Board finds that the Applicant has attempted to minimize the encroachment into the setback area.
- 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