

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: HOWARD PAUL LANDGRAF, III

(Case No. 12759)

A hearing was held after due notice on November 21, 2022. The Board members present were: Dr. Kevin Carson, Mr. Jeff Chorman, and Mr. Jordan Warfel.

Nature of the Proceedings

This is an application for variances from the maximum fence height requirement for a proposed fence and from the front yard and side yard setback requirements for existing structures.

Findings of Fact

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

1. A variance of 5.5 feet from the ten (10) feet front yard setback requirement for an existing carport;
2. A variance of 5 feet from the five (5) feet side yard setback requirement on the south side for an existing carport; and
3. A variance of 2.5 feet from the maximum fence height requirement of 3.5 feet for an existing fence.

The property is located on the east side of Pintail Drive within the Swann Keys Subdivision (911 Address: 37036 Pintail Drive, Selbyville) said property being identified as Sussex County Tax Map Parcel Number: 533-12.16-39.00 ("the Property"). After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a survey of the Property dated April 3, 1992, photographs, an administrative variance request, a certificate of compliance, a letter supporting the request, 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 three (3) letters in support of and no correspondence in opposition to the Application.
3. The Board found that Howard Landgraf, III, and Mark Landgraf were sworn in to give testimony about the Application.
4. The Board found that Howard Landgraf testified that he and his brother are representatives of their late father's estate. He noted that their father was a long-term resident of Swann Keys and that, as part of the administration of the estate, they found an email from Sussex County noting that there were setback violations on the Property that needed to be addressed. As a result, the Applicant has filed this application.
5. The Board found that Howard Landgraf testified that the carport has been up since 2019 and the fence was installed late last year. They attempted to reach both companies who installed the structures but have received no response.
6. The Board found that Howard Landgraf testified that they inherited the Property and are trying to get it ready for sale.
7. The Board found that Howard Landgraf testified that the first section of the taller fence panel on the right side of the Property is 6 feet high and that there is a small 2 foot tall panel on the left side of the carport that would have to come out.
8. The Board found that Howard Landgraf testified that the Property is a small lot and has some of its own nuances.

9. The Board found that Howard Landgraff testified that they have been cleaning up the Property and spoken with neighbors to the sides and across the street and that there has been no opposition to the Application.
10. The Board found that Howard Landgraff testified that the paved road is only about 20 feet wide but their community bylaws state that the community has 30 feet of right-of-way, so there is another 5 feet that they learned on each property line toward the houses. He believes the right-of-way is for utility purposes.
11. The Board found that Howard Landgraff testified that these structures do not encroach upon the accessibility of neighboring properties nor do they do not encumber anyone's right to their property, their view, or block their enjoyment of the property.
12. The Board found that Howard Landgraff testified that they have no intentions to do anything with the Property other than to keep it in the condition that it was left to them in by their father in order to sell it.
13. The Board found that Howard Landgraff testified that there are some other homes down there that look like they have some sheds that might be closer than the fence and the carport.
14. The Board found that Howard Landgraff testified that the carport is attached to the house and, if you are facing the house, the carport is bolted underneath the roof overhang on the right side. He noted that there are also four (4) posts holding each corner of the carport and that the footings to the carport are bolted in.
15. The Board found that Howard Landgraff testified that the roof of the carport is even with the fence but the carport is solely on the Property and does not extend over the property line. He noted that the carport was run to the edge of the concrete pad.
16. The Board found that Howard Landgraff testified that they have not received homeowner association approval yet but have made the association aware of their plans.
17. The Board found that Howard Landgraff testified that the permit to place the home from 1989 was not closed out until a survey was submitted this year.
18. The Board found that Howard Landgraff testified that part of the rear of the Property is in the lagoon based on the survey from 1992.
19. The Board found that Howard Landgraff testified that you can stand underneath the carport and wash it while remaining on the Property. He also noted that the carport has a gutter which runs to a drain and does not run to neighboring properties.
20. The Board found that no one appeared in support of or in opposition to the Application.
21. 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 as it is a small lot measuring only 5,500 square feet and a large portion of the rear yard is located in a lagoon. The Applicant inherited the Property from his late father and discovered that the carport and fence violate the setback requirements. Based on the record, it appears that the Applicant's father relied on contractors to build those structures in compliance with the Sussex County Zoning Code only to later learn of the violation. The Property is also developed by a house that was placed on the Property in 1989. These conditions greatly restrict the building envelope on the Property. It is clear to the Board that the lot's unique characteristics and other circumstances noted herein have created

- an unnecessary hardship and exceptional practical difficulty for the Applicant who seeks to retain a carport and fence 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 and its development by a prior owner, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Applicant seeks to retain a fence and carport on the Property for 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 the Applicant to retain those structures on the Property. 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 method by which the carport was installed appears to make removal thereof difficult and the Applicant seeks the variances so that the Applicant can retain the carport and fence and sell the Property.
 - d. The exceptional practical difficulty and unnecessary hardship were not created by the Applicant. The Applicant did not create the lot, otherwise develop the lot, or enact the setback requirements which have limited the building envelope of the lot. Rather, the Applicant only recently acquired the lot which was developed by a prior owner. The unique characteristics of the Property are clear when reviewing the survey. The Board is convinced that the exceptional practical difficulty and unnecessary hardship were not created by the Applicant but was created the lot's unique characteristics. The Board also notes that the prior owner relied on contractors to build these structures in compliance with the Code.
 - 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 structures will have no effect on the character of the neighborhood. There was no evidence was presented which would indicate that the variances would somehow alter the essential character of the neighborhood or be detrimental to the public welfare. Rather, the Board received a letter supporting the request and the Applicant testified that neighbors did not oppose the request. The structures have been on the Property for some time and no evidence about their adverse impact on the neighborhood were submitted into the record.
 - 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 a reasonably sized carport and fence on the Property. 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. Jeffrey Chorman, and Mr. Jordan Warfel. No Board Member voted against the Motion to approve the variance application. Mr. Travis Hastings and Mr. John Williamson did not participate in the discussion or vote on this 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 January 23, 2023.