

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: NORMA T. SLADE

(Case No. 12043)

A hearing was held after due notice on October 16, 2017. The Board members present were: Mr. Dale Callaway, Ms. Ellen Magee, Mr. Bruce Mears, Mr. John Mills, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for variances from the front yard and side yard setback requirements.

Findings of Fact

The Board found that the Applicant is seeking a variance of 3.3 feet from the ten (10) feet front yard setback requirement for a dwelling, a variance of 3.4 feet from the ten (10) feet front yard setback requirement for a dwelling, and a variance of 2.9 feet from the ten (10) feet side yard setback requirement on the north side for a screened porch. This application pertains to certain real property is located on the east side of Pintail Drive, approximately 909 feet northeast of Swann Drive (911 Address: 36998 Pintail Drive, Selbyville); said property being identified as Sussex County Tax Map Parcel Number 5-33-12.16-49.00.

1. The Board was given copies of the Application, a portion of the tax map of the area, a survey of the Property dated July 10, 2017, a deed to the Property, and Certificates of Compliance.
2. The Board found that the Office of Planning & Zoning received no letters in support of or in opposition to the Application.
3. The Board found that Thomas Carney was sworn in to testify about the Application. Raymond Tomasetti, Esquire, presented the case and submitted exhibits for the Board to review including pictures of the area.
4. The Board found that Mr. Tomasetti stated that the Applicant purchased the Property in 2015 and the encroachment issue arose when she tried to sell the Property.
5. The Board found that Mr. Tomasetti stated that the prior owner owned the Property from 1978 to 2015 and the prior owner placed the manufactured home on the Property in 2000. The shed and porch were built in 2001.
6. The Board found that Mr. Tomasetti stated that certificates of compliance were issued for the placement of the home and, later, the addition of a porch and shed to the Property.
7. The Board found that Mr. Tomasetti stated that the Property is unique. 25 feet of the rear of the Property is located in the adjacent lagoon.
8. The Board found that Mr. Tomasetti stated that the Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code.
9. The Board found that Mr. Tomasetti stated that the exceptional practical difficulty was not created by the Applicant.
10. The Board found that Mr. Tomasetti stated that the variances will not alter the essential character of the neighborhood.
11. The Board found that Mr. Tomasetti stated that the structures have been on the Property since 2000.
12. The Board found that Mr. Tomasetti stated that there are other similar encroaching structures in the neighborhood and other homes are set back a similar distance from the property lines.

13. The Board found that Mr. Tomasetti stated that the variances requested represent the minimum variances necessary to afford relief.
14. The Board found that Mr. Carney testified that he lives in Swann Keys and has knowledge of the Property. He was once President of the Swann Keys Civic Association.
15. The Board found that Mr. Carney testified that the statements made by Mr. Tomasetti are true and correct.
16. The Board found that Mr. Tomasetti stated that there have been no additions made to the home since the certificates of compliance were issued.
17. The Board found that Mr. Tomasetti stated that there have been no complaints from neighbors.
18. The Board found that no parties appeared in support of or in opposition to the Application.
19. 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 clearly unique as it is a small and narrow lot. The Property is only fifty (50) feet wide and consists of only 5,538 square feet; as is clearly shown on the survey. Additionally, a significant portion of the rear of the Property is located in a lagoon; thereby greatly limiting an already small building envelope. These unique physical conditions have created an exceptional practical difficulty for the Applicant by creating an unusual and limited building envelope for the Applicant.
 - b. Due to the uniqueness of the Property, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property was created many years ago as part of a mobile home park. The Applicant seeks to retain the home and porch 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 the home and porch to remain on the Property. The Board is convinced that the size, shape, and location of these structures are reasonable, which is confirmed when reviewing the survey provided by the Applicant.
 - c. The exceptional practical difficulty was not created by the Applicant. The Property was created and developed many years ago and is a narrow and undersized lot. The Board notes that the narrowness of the lot greatly limits the building envelope. The Applicant did not create the size and shape of the lot. Rather, those conditions pre-existed the Applicant's acquisition of the Property. Furthermore, the rear of the Property which is in the lagoon has exacerbated an already difficult situation for the Applicant. Ultimately, these unique physical conditions have resulted in a limited building envelope and have created the exceptional practical difficulty for the Applicant. The Board also notes that the Applicant did not place these structures on the Property. Those structures were placed on the lot by a prior owner who obtained certificates of compliance indicating that they complied with the Sussex County Zoning Code only for the Applicant to later discover the error.
 - d. 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 home and porch have been on the Property for nearly twenty (20) years and, despite their longstanding location and notice to neighbors, 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. This lack of evidence is telling since the Board would expect some evidence if the structures had altered the essential character of the neighborhood. The Board notes that the pictures indicate that other homes are similarly situated and the Applicant has received no complaints about the placement of the home and porch.

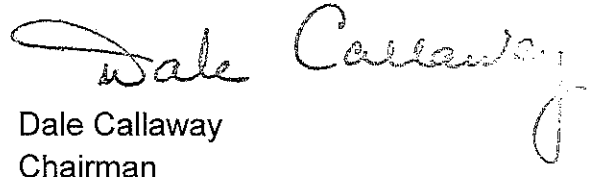
- e. The variances sought are the minimum variances necessary to afford relief and the variances requested represent the least modifications possible of the regulations at issue. The Applicant has demonstrated that the variances sought will allow the Applicant to retain a reasonably sized home and porch on the lot and the home and porch will be consistent with other homes and porches in the community.

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 were Mr. Dale Callaway, Ms. Ellen Magee, Mr. Bruce Mears, Mr. John Mills, and Mr. Brent Workman. No Board Member voted against the Motion to approve the variance application as modified.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY


Dale Callaway
Chairman

If the use is not established within one (1) year from the date below the application becomes void.

Date December 19, 2017.