

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: DONALD F. DAILEY, JR. (Case No. 11064)

A hearing was held after due notice on October 1, 2012. The Board members present were: Mr. Dale Callaway, Mr. Jeff Hudson, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for variances of the front yard, side yard and rear side yard setback requirements.

Findings of Fact

The Board found that the Applicant was seeking a variance of 4.7 feet from the required 5 foot side yard setback requirement, a 1.1 foot variance from the required 5 foot front yard setback requirement, a 5.5 foot variance from the required 10 foot side yard setback requirement for an existing manufactured home, a 4.3 foot variance from the required 5 foot side yard setback requirement for an existing deck, and a 5.6 foot variance from the required 20 foot rear yard setback requirement for an existing deck. The Applicant has requested that the aforementioned requested variances be granted as it pertains to certain real property located south of Route 54 (Lighthouse Road) west of Cleveland Avenue, being Lot 40 within Cape Windsor development; said property being identified as Sussex County Tax Map Parcel Number 5-33-20.14-53.00. After a hearing, the Board made the following findings of fact:

1. Donald Dailey, Jr., testified on behalf of the Application.
2. The Board found that Mr. Dailey testified that he purchased the Property twenty (20) years ago and that he has recently placed a portable shed on the Property for additional storage.
3. The Board found that Mr. Dailey testified that a neighbor advised him that no permits were needed for a portable building and that he applied for the variance after receiving notice of violation.
4. The Board found that Mr. Dailey testified that, in 1990, a deck was built on the Property after obtaining a variance.
5. The Board found that Mr. Dailey testified that the Homeowners Association at that time advised him he would need building permits and a variance for the deck.
6. The Board found that Mr. Dailey testified that the previous owner placed the manufactured home on the Property and he assumed that the home was in compliance with the setback requirements; especially after the issue was not raised when he obtained a variance for the deck.
7. The Board found that Mr. Dailey testified that he was not aware the manufactured home needed any variances until he applied for the variance for the shed.
8. The Board found that Mr. Dailey testified that the existing home is wide.
9. The Board found that Mr. Dailey testified that his neighbor is in support of the Application.
10. The Board found that Mr. Dailey testified that the lot is unique in size as it is narrow.
11. The Board found that Mr. Dailey testified that the Property cannot be developed in strict conformity.
12. The Board found that Mr. Dailey testified that the difficulty was not created by the Applicant.
13. The Board found that Mr. Dailey testified that the variances will not alter the character of the neighborhood.

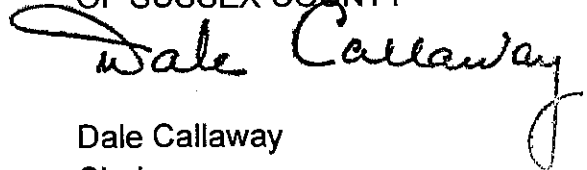
14. The Board found that Mr. Dailey testified that the variances requested are the least modifications of the regulation possible and that there have been numerous variances granted in the development.
15. The Board found that Doug Tenly was sworn in and testified in opposition to the Application.
16. The Board found that Mr. Tenly testified that he is representing the adjacent property owner who has an application before the Board this evening.
17. The Board found that Mr. Tenly testified that the neighbor believed the variance request would be a much smaller shed.
18. The Board found that Mr. Tenly testified that the shed doors swing open over the property line.
19. The Board found that Mr. Tenly testified that the neighbor is concerned with the water run off the shed will create.
20. The Board found that Mr. Tenly testified that the neighbor has fire safety concerns.
21. The Board found that Mr. Tenly submitted pictures showing the location of the shed.
22. The Board found that Mr. Dailey testified that when he spoke to his neighbor she had no objection to the proposed shed.
23. The Board found that Mr. Dailey testified that the shed is used to store his motorcycle, gas can and a small workshop area.
24. The Board found that Mr. Dailey testified that a smaller shed would not suit his needs.
25. The Board found that Mr. Dailey testified that the size of the shed was altered at an extra cost to fit on the lot.
26. The Board found that Mr. Dailey testified that he was given wrong information from the Homeowners Association.
27. The Board found that no parties appeared in support of the Application.
28. The Board found that one (1) party appeared in opposition to the Application.
29. The Board found that no parties appeared in support of or in opposition to the Application.
30. Based on the findings above and the testimony presented at the public hearing and the public record, the Board determined that the Application, in part, met the standards for granting a variance and that the Application, in part, failed to meet the standards for granting a variance.
31. The Board approved the requested 1.1 foot variance from the required 5 foot front yard setback requirement, the 5.5 foot variance from the required 10 foot side yard setback requirement for an existing manufactured home, the 4.3 foot variance from the required 5 foot side yard setback requirement for an existing deck, and the 5.6 foot variance from the required 20 feet rear yard setback requirement for an existing deck based upon the record made at the public hearing and for the following reasons. The Property is unique in size and structures have existed on lot for 20 years. The variances will enable reasonable use of the Property. The variances, if granted will not alter the essential character of the neighborhood. The variances sought are the minimum variances to afford relief.
32. The Board denied the requested 4.7 foot variance for existing shed based upon the record made at the public hearing and for the following reasons. The difficulty is created by the Applicant.

The Board approved the variance application in part and denied the variance application in part finding that it partially met the standards for granting a variance. The Board approved the variance requests except for the variance request for an existing shed.

Decision of the Board

Upon motion duly made and seconded, the Application was approved in part and denied in part. The Board Members voting to approve the Application in part and to deny the Application in part were Mr. Dale Callaway, Mr. Jeff Hudson, and Mr. Norman Rickard. Mr. John Mills voted against the Motion to Approve the Application in Part and to Deny the Application in Part.

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 November 7, 2012