

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: DAVID G. SCHIAVONE & DEBORAH C. SCHIAVONE (Case No. 11083)

A hearing was held after due notice on November 5, 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 side yard setback requirement.

Findings of Fact

The Board found that the Applicants were seeking variances of 5.00 feet from the 10 foot side yard setback requirement on both sides of the Property for a proposed dwelling. The Applicants have requested that the aforementioned requested variances be granted as they pertain to certain real property located south of Route 54 (Lighthouse Road) south of Wilson Avenue, being Lot 16 within Cape Windsor development; said property being identified as Sussex County Tax Map Parcel Number 5-33-20.18-146.00. After a hearing, the Board made the following findings of fact:

1. David Schiavone was sworn in and testified on behalf of the Application.
2. James Fuqua, Esquire, appeared and presented the Application on behalf of the Applicants.
3. The Board found that Mr. Fuqua submitted to the Board a packet of exhibits in support of the Application.
4. The Board found that Mr. Fuqua stated that the Applicants purchased the Property in 2007 and that the Property is located within the Cape Windsor development.
5. The Board found that Mr. Fuqua stated that the existing manufactured home has been removed.
6. The Board found that Mr. Fuqua stated that the Applicants intend to place a dwelling on the Property.
7. The Board found that Mr. Fuqua stated that the original proposed dwelling will be 30 feet wide and that the existing lot is only 40 feet wide.
8. The Board found that Mr. Fuqua stated that the rear yard abuts the lagoon.
9. The Board found that Mr. Fuqua stated that the "point lots" in Cape Windsor are only 40 feet wide and other lots in the development are 50 feet wide.
10. The Board found that Mr. Fuqua stated that the Applicants would agree to building a dwelling which is only 25 feet wide and thereby only request a 5 feet variance from the West side yard property line.
11. The Board found that Mr. Fuqua stated that no variance is needed for the East side yard setback property line.
12. The Board found that Mr. Fuqua stated that the history of the development creates a uniqueness.
13. The Board found that Mr. Fuqua stated that the development was developed as a Mobile Home Park.
14. The Board found that Mr. Fuqua stated that it is not feasible to build a 20 feet wide dwelling on the Property.
15. The Board found that Mr. Fuqua stated that there are 25 "point lots" in the development and 15 of those lots have been granted variances.
16. The Board found that Mr. Fuqua stated that the lot is undersized.
17. The Board found that Mr. Fuqua stated that the variances will enable reasonable use of the Property.
18. The Board found that Mr. Fuqua stated that the variances will not alter the essential character of the neighborhood.

19. The Board found that Mr. Fuqua stated that the difficulty was not created by the Applicants.
20. The Board found that Mr. Fuqua stated that the variances are the minimum variances necessary to afford relief.
21. The Board found that Mr. Fuqua stated that the adjacent Lot 15 was granted a variance.
22. The Board found that Mr. Schiavone, under oath, confirmed the statements by Mr. Fuqua.
23. The Board found that Kerry Wertz was sworn in and testified in support of the Application.
24. The Board found that Mr. Wertz testified that he is a full time resident in the development and lives near the Property.
25. The Board found that Mr. Wertz testified that the manufactured homes that are still in the development have been on the lots since the 1960's and the 1970s.
26. The Board found that Mr. Wertz testified that the new dwellings being constructed beautify the development.
27. The Board found that Mr. Wertz testified that the proposed variances are in keeping the character of the development.
28. The Board found that Dr. E. Ann Riley was sworn in and testified in opposition to the Application.
29. The Board found that Dr. Riley testified that she owns Lot 17 which is adjacent to the Property and has lived in the development since 1983.
30. The Board found that Dr. Riley testified that she is concerned about fire safety where fires can easily spread from one house to another due to the close proximity of those houses.
31. The Board found that Dr. Riley testified that she built an addition in compliance with the setback requirements.
32. The Board found that Dr. Riley testified that she is concerned the proposed dwelling will block sunlight from her plantings.
33. The Board found that Dr. Riley testified that she would prefer the Applicants construct a longer dwelling.
34. The Board found that Dr. Riley testified that she is not in favor of a dwelling only five (5) feet from her property line and that she is also concerned what effect the construction will have on the well water.
35. The Board found that Dr. Riley submitted pictures and surveys of the lot.
36. The Board found that Mr. Wertz testified that the Homeowner's Association reviews architectural plans and that they generally have no objection to a 5 feet setback.
37. The Board found that Mr. Fuqua stated that the variance request is only on the West side of the Property which is adjacent to Lot 17.
38. The Board found that Mr. Fuqua stated that there have been ten (10) variances granted since 2000.
39. The Board found that Mr. Fuqua stated that a longer dwelling would be out of character with the neighborhood.
40. The Board found that the Office of Planning & Zoning received a letter from Charles Perry, Jr. in support of a 25 feet wide dwelling with a 5 foot variance on the West side of the property.
41. The Board found that one (1) party appeared in support of the Application.
42. The Board found that one (1) party appeared in opposition to the Application.
43. Based on the findings above and the testimony presented at the public hearing and the public record, the Board determined that the Application, as amended, met the standards for granting a variance. The Property is unique in size. The variance will enable reasonable use of the Property. The difficulty was not created by the Applicants. The variance will not alter the essential character of

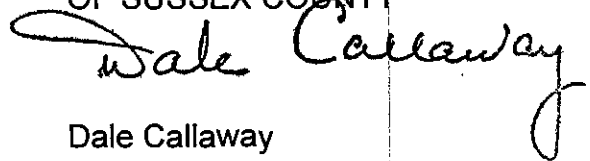
the neighborhood. The variance sought is the minimum variance necessary to afford relief.

The Board approved the variance application, as amended to reflect a side yard variance request of five (5) feet on the West side of the Property, finding that it met the standards for granting a variance.

Decision of the Board

Upon motion duly made and seconded, the Application was approved. The Board Members voting to approve the Application were Mr. Dale Callaway, Mr. Jeff Hudson, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman. No Member voted against the Motion to Approve the Application.

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 11, 2012