

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: WILLIAM R. SANDS

(Case No. 11318)

A hearing was held after due notice on January 27, 2014. The Board members present were: Mr. Dale Callaway, Mr. Jeff Hudson, Mr. John Mills, Mr. Brent Workman and Mr. Norman Rickard.

Nature of the Proceedings

This is an application for variances from the side yard setback requirement.

Findings of Fact

The Board found that the Applicant was seeking a variance of eight (8) feet from the ten (10) foot side yard setback requirement for proposed mechanical equipment, a variance of five (5) feet from the ten (10) foot side yard setback requirement for a proposed dwelling, and a variance of five (5) feet from the ten (10) foot side yard setback requirement for proposed steps and landing. The Applicant has requested that the aforementioned requested variances be granted as they pertain to certain real property located south of Route 54 (Lighthouse Road) and being southwest of Cleveland Avenue on the end of the street and 1,100 feet south of Lincoln Drive and being Lot 24 within Cape Windsor Subdivision; said property being identified as Sussex County Tax Map Parcel Number 5-33-20.18-117.00). After a hearing, the Board made the following findings of fact:

1. The Board found that the Office of Planning & Zoning received no correspondence regarding the Application other than exhibits submitted by the Applicant through his attorney.
2. William Sands and Beverly Houtchins were sworn in to testify on behalf of the Application.
3. Raymond Tomasetti, Esquire, was present to present the Application.
4. The Board found that Mr. Tomasetti stated that the parents of Mr. Sands and Ms. Houtchins purchased the Property from the developer of Cape Windsor in 1970.
5. The Board found that Mr. Tomasetti stated that a plot for Cape Windsor originally showed an error of four (4) feet along the common property line with Lot 25.
6. The Board found that Mr. Tomasetti stated that to correct this error a four (4) feet portion was conveyed from a portion of the five (5) feet walkway from Cleveland Avenue to Big Assawoman Bay.
7. The Board found that Mr. Tomasetti stated that the error was not discovered until after the placement of the existing manufactured home and that no variances were obtained for the existing manufactured home.
8. The Board found that Mr. Tomasetti stated that the existing manufactured home is only 3.3 feet from the common property line with Lot 23.
9. The Board found that Mr. Tomasetti stated that the Applicant seeks approval for variances for placement of a new dwelling on the Property and that the proposed dwelling will be five (5) feet from the property line adjacent to Lot 23.
10. The Board found that Mr. Tomasetti stated that there will be no greater impact on neighboring properties by the placement of the proposed dwelling.
11. The Board found that Mr. Tomasetti submitted pictures of the Property to the Board for consideration.
12. The Board found that Mr. Tomasetti stated that, if the existing dwelling remained, a variance of 6.7 feet would be needed rather than the five (5) feet variance requested for the proposed dwelling.

13. The Board found that Mr. Tomasetti stated that a greater buffer between Lot 23 will be created.
14. The Board found that Mr. Tomasetti stated that the existing HVAC unit is on the Property.
15. The Board found that Mr. Tomasetti stated that the difficulty was not created by the Applicant.
16. The Board found that Mr. Sands testified that he only seeks a variance that is consistent with other lots in the neighborhood and that similar variances were granted for Lot 25.
17. The Board found that Mr. Sands, under oath, confirmed the statements made by Mr. Tomasetti.
18. The Board found that Darin Shartzter and Vicki Shartzter were sworn in and testified in opposition to the Application.
19. The Board found that Mr. Shartzter testified that he owns Lot 25 and that he is not so much opposed to the variance as he is concerned there is still an error on the survey in respect to the property line.
20. The Board found that Ms. Shartzter testified that she also has questions about the location of the property line.
21. The Board found that Mr. Shartzter testified that the deed and survey conflict with one another.
22. The Board found that Mr. Shartzter testified that they have had their deed corrected and believe the survey submitted by the Applicants is incorrect.
23. The Board found that Mr. Shartzter testified that they have been granted a variance for their lot.
24. The Board found that Mr. Shartzter testified that they have no objection to the requested variances which are on the eastern side of the Property but they want clarification of their lot line, which is on the western side of the Property.
25. The Board found that no parties appeared in support of the Application.
26. The Board found that four (4) parties appeared in opposition to the Application.
27. Based on the findings above and the testimony presented at the public hearing and the public record, the Board determined that the Application met the standards for granting a variance. The Property is unique because it is small and only forty (40) feet wide. The variances are necessary to enable reasonable use of the Property. The difficulty was not created by the Applicant. The variances will not alter the essential character of the neighborhood. The variances sought are the minimum variances necessary to afford relief.
28. The variances approved are based on the survey dated November 4, 2013, which was submitted with the Application.

The Board approved the variance application 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

Dale Callaway
Chairman

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

Date March 25, 2014