

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: KRIS CONNELLY and COURTNEY CONNELLY

(Case No. 11467)

A hearing was held after due notice on October 6, 2014. 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 from the side yard and rear yard setback requirements.

Findings of Fact

The Board found that the Applicants were seeking a variance of five (5) feet from the twenty (20) feet rear yard setback requirement for a proposed porch and deck, a variance of three (3) feet from the ten (10) feet side yard setback requirement for a proposed dwelling, a variance of four (4) feet from the ten (10) feet side yard setback requirement for a proposed spiral staircase, and a variance of six (6) feet from the ten (10) feet side yard setback requirement for a proposed HVAC unit. This application pertains to certain real property located south of Route 54 (Lighthouse Road) and being west of Grant Avenue 1,250 feet south of Lincoln Drive and being Lot 38 Block 6 within Cape Windsor Subdivision (911 Address: 38848 Grant Avenue, Selbyville, DE); said property being identified as Sussex County Tax Map Parcel Number 5-33-20.18-40.00. After a hearing, the Board made the following findings of fact:

1. The Office of Planning & Zoning received one (1) letter in support of the Application and no correspondence in opposition to the Application.
2. Kris Connelly and Courtney Connelly were sworn in to testify about the Application.
3. The Board found that Mr. Connelly testified that the Property is located in Cape Windsor and that the Applicants purchased the Property in 2013.
4. The Board found that Mr. Connelly testified that the variances will enable the Applicants to improve the Property by removing the existing manufactured home and build a new dwelling.
5. The Board found that Mr. Connelly testified that Cape Windsor was developed in the 1960s as a mobile home community and that setbacks for the community were modified in the 1990s.
6. The Board found that Mr. Connelly testified that the entire community is located in a flood zone.
7. The Board found that Mr. Connelly testified that the character of the neighborhood has changed from mobile homes to raised dwellings.
8. The Board found that Mr. Connelly testified that many variances have been approved in the neighborhood.
9. The Board found that Mr. Connelly submitted an aerial picture for the Board to review.
10. The Board found that Mr. Connelly testified that his neighbor to the south obtained a variance to allow for a deck within fifteen (15) feet of the adjacent canal.
11. The Board found that Mr. Connelly testified that the existing dwelling does not meet three (3) of the four (4) setback requirements but is a legal, non-conforming structure.
12. The Board found that Mr. Connelly testified that the proposed dwelling will encroach less into the setback areas than the existing manufactured home.

13. The Board found that Mr. Connelly testified that the existing dwelling is close to the canal, the road, and the south side of the Property.
14. The Board found that Mr. Connelly testified that the Applicants also plan to replace the existing bulkhead.
15. The Board found that Mr. Connelly testified that, due to the small size of the lot, the variances are necessary to enable reasonable use of Property.
16. The Board found that Mr. Connelly testified that the Applicants intend to build an elevated, reasonably sized dwelling on the Property.
17. The Board found that Mr. Connelly testified that neighbors on both sides of the Property support the Application.
18. The Board found that Mr. Connelly testified that the proposed dwelling will compliment other dwellings in the area.
19. The Board found that Mr. Connelly testified that normal improvements cannot be made to the existing dwelling due to its legal, non-conforming status.
20. The Board found that Mr. Connelly testified that the dwelling will improve property values.
21. The Board found that Mr. Connelly testified that, by raising the dwelling, the degree of flood plain compliance will be improved and that the variances will provide the additional space needed for off street parking.
22. The Board found that Mr. Connelly testified that parking has been an issue in the neighborhood due to the narrowness of the right-of-ways.
23. The Board found that Mr. Connelly testified that the proposed dwelling will be approximately the same distance from the street as his neighbor's dwelling.
24. The Board found that Mr. Connelly testified that the exceptional practical difficulty was not created by the Applicants as the lots were created prior to the creation of the Sussex County Zoning Code.
25. The Board found that Mr. Connelly testified that the Property cannot be built in strict conformity of the Sussex County Zoning Code due to the history of the subdivision.
26. The Board found that Mr. Connelly testified that the small right-of-ways also create a difficulty because they limit the ability to park along the street.
27. The Board found that Mr. Connelly testified that the variances will promote the health, safety, and welfare of the community by complying with the flood zone requirements and providing parking spaces.
28. The Board found that Mr. Connelly testified that the variances increase the degree of conformity with the Code.
29. The Board found that Mr. Connelly testified that the variances will not alter the character of the neighborhood and that the use will not be detrimental to the public welfare.
30. The Board found that Mr. Connelly testified that the variances requested are the minimum variances necessary to afford relief.
31. The Board found that no parties appeared in support of or in opposition to the Application.
32. Based on the findings above and the testimony and exhibits presented at the public hearing and the public record, the Board determined that the application met the standards for granting a variance. The history of the subdivision makes the Property unique. Cape Windsor was originally developed as a mobile home community with small lots and narrow streets and the mobile homes are being replaced by stick-built dwellings. The Property is also unique because it is small and narrow. The variances are necessary to enable reasonable use of the Property. The Applicants are proposing to build a reasonably sized dwelling on the Property that will be elevated to comply with flood zone requirements and to allow for parking on the Property rather than on the narrow streets. The hardship and exceptional practical difficulty were not created by the Applicants. The lots were created prior to the enactment of the Sussex County Zoning Code and the existing, non-conforming manufactured home needs to be replaced. The

proposed dwelling will better conform with the setback requirements than the existing dwelling. The variances will not alter the essential character of the neighborhood. The proposed dwelling is similar to other dwellings in the neighborhood and will comply with the changing character of the neighborhood. Neighbors have also indicated support of the Application. The use will not be detrimental to the public welfare. The elevation of the house will provide better protection against floods than the existing dwelling which is not elevated. The variances will also enable room on the Property for parking so that vehicles will not extend into the street, which is very narrow. The variances sought are the minimum variances necessary to afford relief.

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, Mr. Jeff Hudson, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman. No Board Members voted against the Motion to approve the variance 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 2, 2014.