

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: THOMAS ROCKSTROH

(Case No. 11474)

A hearing was held after due notice on October 20, 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 rear yard, side yard and corner side yard setback requirements.

Findings of Fact

The Board found that the Applicant was seeking a variance of five (5) feet from the twenty (20) feet rear yard setback requirement for a proposed dwelling, a variance of 8.5 feet from the ten (10) feet side yard setback requirement for a proposed HVAC, a variance of (5) feet from the ten (10) feet side yard setback requirement for a proposed dwelling, and a variance of four (4) feet from the fifteen (15) feet corner side yard setback requirement for a proposed porch. This application pertains to certain real property located south of Route 54 (Lighthouse Road) and being northwest corner of Wilson Avenue 720 feet south of Lincoln Drive and being Lot 20 Block 3 within Cape Windsor Subdivision (911 Address: 38832 Wilson Avenue, Selbyville, DE); said property being identified as Sussex County Tax Map Parcel Number 5-33-20.18-142.00). 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.
2. Kerry Wertz and Charles Hayes were sworn in to testify about the Application.
3. The Board found that Mr. Wertz submitted four (4) letters in support of the Application and pictures for the Board to review.
4. The Board found that Mr. Wertz testified that he is the neighbor and Mr. Hayes is the contractor.
5. The Board found that Mr. Wertz testified that the existing dwelling was damaged beyond repair by Hurricane Sandy as Wilson Avenue was basically a river during the storm.
6. The Board found that Mr. Wertz testified that the existing dwelling is uninhabitable and is a detriment to the public welfare and the Applicant seeks to replace it with a new home.
7. The Board found that Mr. Wertz testified that the lot is only 85 feet long and is also at the corner of a "T" intersection making it unique.
8. The Board found that Mr. Wertz testified that it is important for the dwellings on corner lots to be far from the intersection and away from the street to help with traffic issues.
9. The Board found that Mr. Wertz testified that Wilson Avenue is only nineteen (19) feet wide.
10. The Board found that Mr. Wertz testified that the location of the proposed dwelling will enable cars to park on the Property without going into the street.
11. The Board found that Mr. Wertz testified that on-street parking is a major problem in Cape Windsor.
12. The Board found that Mr. Wertz testified that the Property cannot be developed in strict conformity with the Sussex County Zoning Code due to its narrowness and shallow depth.

13. The Board found that Mr. Wertz testified that the proposed dwelling is not a huge structure and that the variances are necessary to enable reasonable use of the Property.
14. The Board found that Mr. Wertz testified that the difficulty was not created by the Applicant.
15. The Board found that Mr. Wertz testified that the Property was undersized when it was initially developed.
16. The Board found that Mr. Wertz testified that the variances will improve the uses of neighboring and adjacent properties.
17. The Board found that Mr. Wertz testified that the current dwelling is only seven (7) feet from Wilson Avenue.
18. The Board found that Mr. Wertz testified that the variances will not be detrimental to the public welfare.
19. The Board found that Mr. Wertz testified that the variances represent the least modifications of the regulations at issue.
20. The Board found that Mr. Wertz testified that the HVAC unit will be placed in its proposed location to protect it from traffic.
21. The Board found that Mr. Wertz testified that the HVAC unit will be on the same side as the neighbor's HVAC unit and that the neighbor has no objection to the Application.
22. The Board found that Mr. Wertz testified that the Homeowners Association supports the Application.
23. The Board found that Mr. Wertz testified that the house cannot be placed closer to Wilson Avenue because ten (10) feet of the front yard is needed to allow for off-street parking.
24. The Board found that Mr. Wertz testified that the proposed dwelling will not alter the character of the neighborhood and that the variances will not impair the use of adjacent and neighboring properties.
25. The Board found that no parties appeared in support of or in opposition to the Application.
26. Based on the findings above and the testimony and evidence 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 in size as it is only fifty (50) feet wide and eighty-five (85) feet deep. The Property is also unique because it is adjacent to Wilson Avenue, which is only 19 feet wide, thereby making off-street parking very important. The small size of the lot and the need to have space on the Property for parking make the Property unique and, as a result of this uniqueness, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The variances are necessary to enable reasonable use of the Property and will enable the Applicant to place a reasonable sized home on the Property. The Applicant needs to replace his house that was damaged by Hurricane Sandy. The hardship and exceptional practical difficulty were not created by the Applicant. The small lot was created by the developer many years ago and a storm damaged the Applicant's dwelling. The variances will not alter the essential character of the neighborhood. Rather, the location of the dwelling will improve parking and visibility on Wilson Avenue. The variances requested the minimum variances necessary to afford relief. The variances represent the least modifications of the regulations at issue.

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*

Dale Callaway  
Chairman

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

Date *December 16, 2014*