

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: MICHELLE L. LYNAS

(Case No. 11488)

A hearing was held after due notice on November 17, 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 corner front yard and side yard setback requirements.

Findings of Fact

The Board found that the Applicant was seeking a variance of 11.9 feet from the fifteen (15) feet corner side yard setback requirement for an existing dwelling, a variance of 13.6 feet from the fifteen (15) feet corner side yard setback requirement for an existing ramp, a variance of 4.7 feet from the ten (10) feet side yard setback requirement for an existing dwelling, a variance of 8.2 feet from the ten (10) feet side yard setback requirement for an existing outside shower and steps, and a variance of 8 feet from the fifteen (15) feet corner side yard setback requirement for an existing shed. This application pertains to certain real property located south of Route 54 (Lighthouse Road) and being at the southwest corner of Tyler Avenue and Lincoln Avenue and being Lot 51 Block 5 in Cape Windsor Subdivision. (911 Address: 38827 Lincoln Drive, Selbyville, DE); said property being identified as Sussex County Tax Map Parcel Number 5-33-20.14-32.00. After a hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a portion of the tax map of the area, a history of the building permits issued for the Property, a variance application for Case No. 8386, the findings of fact for Case No. 8386, a survey of the Property from February 1988, and a survey of the Property dated January 6, 2005.
2. The Board found that the Office of Planning and Zoning received no correspondence regarding the Application.
3. Irma Cohee was sworn in to testify about the Application. Raymond Tomasetti, Esquire, presented the case to the Board on behalf of the Applicant and submitted exhibits for the Board to review.
4. The Board found that Mr. Tomasetti stated that Ms. Cohee is a long-time resident in Cape Windsor and is the realtor in the sale of the Property.
5. The Board found that Mr. Tomasetti stated that the previous owners who constructed the dwelling are deceased and the Property was recently sold by their children to the Applicant.
6. The Board found that Mr. Tomasetti stated that a previous variance was granted in 2003.
7. The Board found that Mr. Tomasetti stated that the dwelling is located 23.8 feet from Tyler Avenue.
8. The Board found that Mr. Tomasetti stated that the Property is irregularly shaped making it unique.
9. The Board found that Mr. Tomasetti stated that a home could not be constructed on the Property without a variance.
10. The Board found that Mr. Tomasetti stated that Lincoln Drive has a 50 feet right-of-way but is only 34 feet wide.
11. The Board found that Mr. Tomasetti stated that the size of the road on Lincoln Drive may have caused the mistake in the placement of the structures because it gives the impression that the Property is larger than it actually is.
12. The Board found that Mr. Tomasetti stated that all improvements have existed on the Property since 2004.


13. The Board found that Mr. Tomasetti stated that the variances will not alter the character of the neighborhood.
14. The Board found that Mr. Tomasetti stated that the difficulty was not created by the Applicant.
15. The Board found that Mr. Tomasetti stated that the variances are the minimum variances to afford relief.
16. The Board found that Mr. Tomasetti stated that all permits were obtained by the previous owner.
17. The Board found that Ms. Cohee testified that the shed is detached and confirmed the statements made by Mr. Tomasetti as being true and correct.
18. The Board found that no parties appeared in support of or in opposition to the Application.
19. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, which the Board found credible, persuasive, and un rebutted, the Board determined that the application met the standards for granting a variance. The findings below further support the Board's decision to approve the Application.
 - a. The Property is unique due to its size and irregular shape. The shape of the lot is particularly unusual and quite apparent upon review of the survey. The Property is also adjacent to a lagoon which is unique.
 - b. Due to the size and shape of the Property, there is no possibility that the Property can be developed in strict conformity with the Sussex County Zoning Code without a variance. The variances are thus necessary to enable reasonable use of the Property.
 - c. The exceptional practical difficulty and unnecessary hardship were not created by the Applicant. It is clear from the record that the structures were placed on the Property by a prior owner. Furthermore, the size and shape of the Property were created prior to the enactment of the Sussex County Zoning Code. Neither the creation of the lot or the placement of the structures was created by the Applicant.
 - d. The variances will not alter the essential character of the neighborhood. The structures have been in their current location for approximately ten (10) years without complaint.
 - e. The variances sought are the minimum variances necessary to afford relief as the variances will allow the existing structures to remain in their current location.

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 January 27, 2015.