

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: MICHAEL MATHER and MELISSA MATHER

(Case No. 11500)

A hearing was held after due notice on December 15, 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 5.4 feet from the ten (10) feet side yard setback requirement for an existing dwelling, a variance of eight (8) feet from the ten (10) feet side yard setback requirement for an existing HVAC unit, and a variance of 2.6 feet from the twenty (20) feet rear yard setback requirement for an existing dwelling. This application pertains to certain real property located south of Route 54 (Lighthouse Road) and being east of Wilson Avenue approximately 700 feet south of Lincoln Drive and being more specifically Lot 10 Block 3 within Cape Windsor Subdivision (911 Address: 38811 Wilson Avenue Ext., Selbyville, DE); said property being identified as Sussex County Tax Map Parcel Number 5-33-12.18-152.00.

1. The Board was given copies of the Application, a portion of the tax map of the area, minutes of Case No. 2385, a letter from the Cape Windsor Community Association, and a survey of the Property dated October 13, 2014.
2. The Board found that the Office of Planning and Zoning received no correspondence regarding the Application.
3. Michael Mather was sworn in to testify the Application.
4. The Board found that Mr. Mather testified that a special use exception was granted by the Board in 1983 to place a modular home on the Property.
5. The Board found that Mr. Mather testified that a dwelling was placed on the Property in 1983 and that the Property has been sold four (4) times since 1983.
6. The Board found that Mr. Mather testified that he discovered the need for the variances when he applied for a building permit to construct an addition.
7. The Board found that Mr. Mather testified that he plans to raise the dwelling and build a garage underneath to provide protection from the weather when transporting his handicapped son.
8. The Board found that Mr. Mather testified that the garage will also provide storage.
9. The Board found that Mr. Mather testified that the dwelling will be extended in the front yard and side yard but will comply with the setback requirements on those portions of the Property.
10. The Board found that Mr. Mather testified that the variances will not alter the essential character of the neighborhood and that the variances will not be detrimental to the public welfare.
11. The Board found that Mr. Mather testified that the proposal will not affect the views from his neighbors' properties.
12. The Board found that Mr. Mather testified that the proposed additions will comply with all required setbacks.
13. The Board found that Mr. Mather testified that the structures will not affect his neighbors' views.


14. The Board found that Mr. Mather testified that the HVAC unit has also been there since 1983 and will stay in its current location.
15. The Board found that no parties appeared in support of or in opposition to the Application.
16. 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 as the lot is small and narrow. The situation is also unique because the dwelling has existed in its current location since 1983 but the encroachments were only recently discovered.
 - b. The Property cannot be developed in strict conformity with the Sussex County Zoning Code and the variances are necessary to enable reasonable use of the Property. The variances will allow the Applicants to keep the existing dwelling on the Property and to raise the dwelling to allow for better access to the home.
 - c. The exceptional practical difficulty was not created by the Applicants. The dwelling was placed on the Property by a prior owner and has been in its current location for many years. The un rebutted testimony further evidences that the structures were in their current locations when the Applicants purchased the Property. It is clear that these encroachments were created by a prior owner and not by the Applicants. The size of the lot is also small, which creates a small building envelope, and was not created by the Applicants.
 - d. The variances will not alter the essential character of the neighborhood nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare. The structures have been in their current locations since 1983 and no evidence was presented that the structures have altered the character of the neighborhood or somehow been detrimental to the neighborhood. The approval of these variances allows the existing structures to remain in their locations and for reasonable additions and renovations to be made to the home.
 - e. The variances sought are the minimum variances necessary to afford relief and 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
Chairman

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

Date February 18, 2015.