

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: JAMES AHERN

(Case No. 11501)

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 Applicant was seeking a variance of 8.5 feet from the ten (10) feet rear yard setback for the stairs to the deck, a variance of five (5) feet from the ten (10) feet rear yard setback for the proposed dwelling and porch, a variance of eight (8) feet from the north side yard setback for the proposed HVAC unit, propane tanks, stairs, and outdoor shower, and a variance of five (5) feet from the north side yard setback for the dwelling. This application pertains to certain real property located south of Route 54 (Lighthouse Road) and being east of Grant Avenue approximately 1,117 feet south of Lincoln Drive and being Lot 22 Block 6 within Cape Windsor Subdivision (911 Address: 38827 Grant Avenue, Selbyville, DE); said property being identified as Sussex County Tax Map Parcel Number 5-33-20.18-56.00.

1. The Board was given copies of the Application, a portion of the tax map of the area, a statement from the Applicant, a survey of the Property dated October 23, 2014, and an undated diagram of the Property.
2. The Board found that the Office of Planning and Zoning received one (1) letter in opposition to the Application from Irma Codey and no letters in support of the Application.
3. James Ahern was sworn in to testify the Application.
4. The Board found that Mr. Ahern testified that he purchased the Property in 2004 with his brother and that he bought his brother's interest in 2012.
5. The Board found that Mr. Ahern testified that the existing manufactured home was placed in the 1970s and that additions were added in the 1980s.
6. The Board found that Mr. Ahern testified that he is replacing a dilapidated structure with a nicer home.
7. The Board found that Mr. Ahern testified that the proposed dwelling will have 1,570 square-feet of living space.
8. The Board found that Mr. Ahern testified that the existing manufactured home is only 4.3 feet from the northern property line.
9. The Board found that Mr. Ahern testified that the standard side yard setback in Cape Windsor is five (5) feet on the north side and ten (10) feet on the south side.
10. The Board found that Mr. Ahern testified that the HVAC system, outdoor shower, stairs to the outdoor shower, and propane tank will be located on the north side of the Property.
11. The Board found that Mr. Ahern testified that the shower will be elevated.
12. The Board found that Mr. Ahern testified that the steps from the outdoor shower will not encroach any further than the proposed outside shower.
13. The Board found that Mr. Ahern testified that the Property is unique and that the narrowness of the Property creates the need for the variance.

14. The Board found that Mr. Ahern testified that the variances are necessary for the reasonable use of the Property.
15. The Board found that Mr. Ahern testified that the variances will not alter the essential character of the neighborhood and that the variances will not impair the uses of neighboring and adjacent properties.
16. The Board found that Mr. Ahern testified that the variances will not be detrimental to the public welfare.
17. The Board found that Mr. Ahern testified that the variances represent the least modifications of the regulations at issue and that the variances are the minimum variances necessary to afford relief.
18. The Board found that Mr. Ahern testified that he is seeking a variance of five (5) feet on the north side of the Property for the house and that he is seeking a variance of five (5) feet on the east side of the Property for the house, porch, and deck.
19. The Board found that Mr. Ahern testified that the screen porch will be enclosed.
20. The Board found that Mr. Ahern testified that the deck is twelve (12) feet deep.
21. The Board found that Mr. Ahern testified that he now seeks to have the steps from the rear deck extend further into the setback area.
22. The Board found that Mr. Ahern testified that the rear property line is located a few feet into the canal.
23. The Board found that Mr. Ahern testified that the Property is 90+/- feet deep.
24. The Board found that Mr. Ahern testified that his house will be further from the bulkhead than houses on neighboring lots.
25. The Board found that Mr. Ahern testified that the proposed dwelling is further from the rear property line than the existing dwelling.
26. The Board found that Mr. Ahern testified that he wants to retain access to the bulkhead on the south side of the Property which is why he does not want to put the stairs to the deck on that side of the lot.
27. The Board found that Mr. Ahern testified that the garage will have a foundation.
28. The Board found that Mr. Ahern testified that the garage will measure under 600 square-feet and is only one (1) story tall.
29. The Board found that Irma Codey was sworn in and testified in opposition to the Application and testified that she owns the adjacent Lot 23.
30. The Board found that Ms. Codey testified that her lot is only 86 feet deep but she built her home in strict conformity to the Sussex County Code.
31. The Board found that Ms. Codey testified that the Applicant's proposed dwelling will alter the essential character of the neighborhood because the proposed dwelling is different from the normal houses in the neighborhood.
32. The Board found that Ms. Codey testified that the Applicant plans to build the dwelling himself and is creating his own difficulty.
33. The Board found that Ms. Codey testified that most of the homes in the neighborhood are 28 feet wide.
34. The Board found that Ms. Codey testified that she is unaware of steps from outdoor showers in the neighborhood.
35. The Board found that Ms. Codey testified that the Applicant did not meet the standards for granting a variance and that he should build a dwelling more customary for the neighborhood.
36. The Board found that William Raither was sworn in and testified about the Application.
37. The Board found that Mr. Raither testified that if the shower, HVAC system and propane tank are two (2) feet from the property line, he is okay with variances and that he has no issue with the proposed variances.
38. The Board found that one (1) party appeared in support of the Application.
39. The Board found that one (1) party appeared in opposition to the Application.

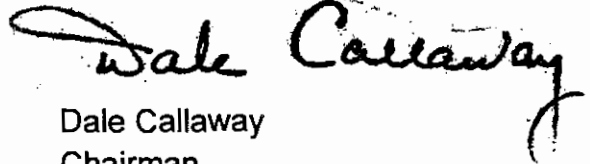
40. At the conclusion of the public hearing, the Board voted to leave the case open until January 26, 2015 for the limited purpose of allowing the Applicant to submit a revised survey of the Property to show the exact variances being requested.
41. On January 26, 2015, the Board reviewed the survey dated December 29, 2014 submitted by the Applicant. The survey showed the garage as being detached and under 600 square feet; thus no variance was necessary for the proposed garage. The survey also shows that the Applicant needs a variance of 8.5 feet from the rear yard setback for a deck.
42. 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. In making this determination, the Board reviewed the testimony and evidence presented by both the opposition and the Applicant and found the testimony and evidence presented by the Applicant to be more persuasive. The findings below further support the Board's decision to approve the Application.
 - a. The Property is unique due to its narrow width and shallow depth which greatly limit the buildable area on the Property. This difficulty is apparent when reviewing the survey, diagram, and photographs.
 - b. Due to the unique conditions of the lot, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The proposed dwelling, porch, deck, stairs, outdoor shower, propane tanks and HVAC unit are reasonable uses of the Property and cannot be constructed as proposed in strict conformity with the Sussex County Zoning Code. The Board was convinced by the Applicant's testimony that the structures are reasonable in size and necessary to meet the Applicant's needs. Accordingly, the variances are necessary to enable reasonable use of the Property.
 - c. The exceptional practical difficulty was not created by the Applicant. The Applicant did not create the small lot and his unrebutted testimony demonstrates that the existing dwelling is dilapidated and needs to be replaced with a newer home. The existing dwelling itself encroaches into the setback areas so it is not unreasonable to expect that its replacement would also encroach into the setback areas.
 - 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 existing dwelling needs to be replaced and the proposed dwelling will be an upgrade over the existing home. The Board was not persuaded by testimony from the opposition that the proposed structures will be out of character for the neighborhood. The Board also gave weight to the testimony of William Raither who had no objection to the proposed variances. This testimony was persuasive since Mr. Raither owns the lot to the north of the Property and the structures which need the side yard variances are adjacent to his lot.
 - e. The variances sought are the minimum variances necessary to afford relief and the variances requested represent the least modifications possible of the regulations at issue. The Applicant has demonstrated that the variances requested will allow the Applicant to make the proposed improvements to the Property and that no additional variances will be needed.

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 March 3, 2015.