

**BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY**

**IN RE: JOHN H. HARTMAN REVOCABLE TRUST**

**(Case No. 11545)**

A hearing was held after due notice on April 6, 2015. 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 setback requirement.

Findings of Fact

The Board found that the Applicant was seeking a variance of 8.3 feet from the ten (10) feet side yard setback requirement for a proposed HVAC unit and a variance of five (5) feet from the ten (10) feet side yard setback requirement for a proposed dwelling. This application pertains to certain real property located south of Route 54 (Lighthouse Road) and being east of Roosevelt Avenue, approximately 1,080 feet south of Lincoln Drive and being more specifically Lot 20 Block 7 within Cape Windsor Subdivision (911 Address: 38805 Roosevelt Avenue Ext., Selbyville, DE); said property being identified as Sussex County Tax Map Parcel Number 5-33-20.18-15.00.

1. The Board was given copies of the Application, a portion of the tax map of the area, and a survey of the Property dated January 16, 2015.
2. The Board found that the Office of Planning & Zoning did not receive any correspondence regarding the Application.
3. The Board found that Doug Tenly was sworn in and testified regarding the Application.
4. The Board found that Mr. Tenly testified that he lives in Cape Windsor and is representing the Applicant.
5. The Board found that Mr. Tenly testified that the Property is unique in size.
6. The Board found that Mr. Tenly testified that the variance will allow for more parking on the Property. Parking on the street is not permitted in the development and the parking restrictions create an exceptional practical difficulty.
7. The Board found that Mr. Tenly testified that the Property cannot be developed in strict conformity with the Sussex County Zoning Code and that the variances are necessary to enable reasonable use of the Property.
8. The Board found that Mr. Tenly testified that the need for the variances has not been created by the Applicant.
9. The Board found that Mr. Tenly testified that the variances will not alter the character of the neighborhood and that the variances will not be detrimental to the public welfare.
10. The Board found that Mr. Tenly testified that the variances are the minimum variances to afford relief.
11. The Board found that Mr. Tenly testified that the Property is in a flood zone and the house will be raised.
12. The Board found that Mr. Tenly testified that the proposed dwelling is similar to neighboring dwellings and that other homes in the neighborhood have similar placements of HVAC units and dwellings in relation to the lot lines
13. The Board found that Mr. Tenly testified that the house cannot be moved closer to the south property line because space is needed on that side of the house for parking.
14. The Board found that Mr. Tenly testified that the Applicant expects to be able to park 5 cars on the Property. There will be a 2 car garage under the dwelling, 1

additional car can park under the deck and 2 cars can park along the south side of the house.

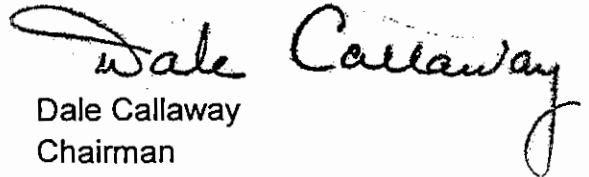
15. The Board found that two (2) parties appeared in support of the Application.
16. The Board found that no parties appeared in opposition to the Application.
17. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, which the Board found credible, 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 small size which is clearly evident when reviewing the survey. The Property is narrow, shallow, and located in a flood zone adjacent to a lagoon. Originally, Cape Windsor was developed as a mobile home community but has evolved into a community which also has stick-built dwellings. The Property is also unique because there is no on-street parking in Cape Windsor and parking on the Property is required. The unique characteristics of this Property have created an exceptional practical difficulty for the Applicant.
  - b. Due to the unique size of the Property and the parking restrictions, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Applicant seeks the variance to allow for the construction of a reasonably sized dwelling and HVAC unit which will be constructed in such a manner as to provide parking for up to 5 vehicles on the lot. The Board is convinced that the size and location of the dwelling and HVAC unit are reasonable. The Board found that the variances are necessary to enable the reasonable use of the Property as the variances will allow the dwelling and HVAC unit to be constructed on the Property. The survey attached to the Application confirms that the dwelling and HVAC unit are reasonable in size, shape and location.
  - c. The exceptional practical difficulty was not created by the Applicant. The size of the lot was created many years ago when Cape Windsor was originally a mobile home community. The size of the lot and the community's parking restrictions have created the difficulty for the Applicant because the Applicant cannot place the dwelling and HVAC unit on the Property while still providing for adequate parking. The unique characteristics of the Property are clear when reviewing the survey.
  - 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 un rebutted testimony of Mr. Tenly indicates that the dwelling and HVAC unit are similar to those structures placed on neighboring properties and that the variances will be consistent with the character of the neighborhood. Numerous variances have been granted on nearby properties in Cape Windsor. No evidence was presented which would indicate that the variances would somehow alter the essential character of the neighborhood or be detrimental to the public welfare.
  - e. The variances sought are the minimum variances necessary to afford relief and the variances requested represent the least modifications possible of the regulation at issue. The Applicant has demonstrated that the variances sought will allow the dwelling and HVAC unit to be constructed in their proposed locations.

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 member 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 May 5, 2015