

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

**IN RE: MICHAEL PEROGINE & MARIA PEROGINE**

**(Case No. 11551)**

A hearing was held after due notice on April 20, 2015. The Board members present were: Mr. Dale Callaway, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for variances from the rear yard and side yard setback requirements.

Findings of Fact

The Board found that the Applicants were seeking a variance of 3.83 feet from the ten (10) feet north side yard setback requirement for a proposed HVAC and dwelling and a variance of 1.64 feet from the twenty (20) feet rear yard setback requirement for a proposed dwelling. This application pertains to certain real property located south of Route 54 (Lighthouse Road) and being west of Grant Avenue, approximately 1,500 feet south of Lincoln Drive and also being Lot 36 Block 6 within Cape Windsor Subdivision (911 Address: 38858 Grant Avenue, Selbyville, DE); said property being identified as Sussex County Tax Map Parcel Number 5-33-20.18-42.00.

1. The Board was given copies of the Application, a portion of the tax map of the area, a survey of the Property dated December 5, 2014, and a site plan of the Property.
2. The Board found that the Office of Planning & Zoning did not receive any correspondence regarding the Application.
3. Michael Perogine and Maria Perogine were sworn in to testify about the Application. James Fuqua, Esquire, presented the case on behalf of the Applicants and submitted exhibits to the Board which included a letter from the Cape Windsor Community Association, Inc.
4. The Board found that Mr. Fuqua stated that the Property is located within Cape Windsor. Cape Windsor was originally developed as a manufactured home community and has unique setback requirements. There has been a history in Cape Windsor of replacing older manufactured homes with larger single family dwellings.
5. The Board found that Mr. Fuqua stated that the lot size is 50 feet wide by 90 feet deep and that a lagoon borders the rear of the lot.
6. The Board found that Mr. Fuqua stated that the Applicants want to replace the existing double-wide manufactured home with a dwelling measuring 33 feet wide by 61 feet deep. The Applicants need the requested variances in order to place the dwelling on the lot.
7. The Board found that Mr. Fuqua stated that the dwelling will meet the south side yard setback requirement and the front yard setback requirement.
8. The Board found that Mr. Fuqua stated that the dwelling will be located ten (10) feet from the front property line rather than five (5) feet, which is allowable, so that they can park a vehicle in the front yard.
9. The Board found that Mr. Fuqua stated that the homeowners association approved the proposed dwelling.
10. The Board found that Mr. Fuqua stated that the variances are needed due to the uniqueness of Cape Windsor and its transition from an older mobile home community and due to the small lot size.

11. The Board found that Mr. Fuqua stated that the variances will enable reasonable use of the Property in a manner similar to other new homes in Cape Windsor.
12. The Board found that Mr. Fuqua stated that the difficulty was not created by the Applicants but results from the lot size.
13. The Board found that Mr. Fuqua stated that the variances will not alter the essential character of the neighborhood and that the dwelling will be similar to other homes in the neighborhood. There have been numerous variances granted on the same street and in the community
14. The Board found that Mr. Fuqua stated that there have been numerous variances granted on the same street and in the community.
15. The Board found that Mr. Fuqua stated that the dwelling will not have a negative impact on property values in Cape Windsor nor will the use impair the uses of neighboring and adjacent properties.
16. The Board found that Mr. Fuqua stated that the variances represent the least modifications of the regulations at issue and the variances are the minimum variances to afford relief.
17. The Board found that Mr. Perogine, under oath, confirmed the statements made by Mr. Fuqua.
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 small size. The Property is narrow and is located adjacent to a lagoon. The unique characteristics of this Property limit the buildable area available to the Applicants and have created an exceptional practical difficulty for the Applicants. The Applicants are also restricted in where they can build on the Property due to setback requirements set forth in their community which differ from the Sussex County setback requirements. The uniqueness of the Property is evident when reviewing the site plan submitted by the Applicants.
  - b. Due to the uniqueness of the lot, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Applicants seek to construct a dwelling of a reasonable size but are unable to do so without violating the Sussex County Zoning Code. The Board is convinced that the variances are necessary to enable the reasonable use of the Property as the variances will allow a reasonably sized dwelling with an HVAC system to be placed on the Property. The Board is convinced that the size, shape, and location of the dwelling and HVAC system are reasonable; which is confirmed when reviewing the survey.
  - c. The exceptional practical difficulty was not created by the Applicants. The Applicant did not create the unusual size of the Property or the restrictive covenants which limit the buildable area of the lot. The limited building envelope of the Property has created the exceptional practical difficulty. The unique characteristics of the Property are clear when reviewing the survey and site plan. Cape Windsor has also evolved from a mobile home community to a year-round community with larger, stick-built homes. This transition has also created an exceptional practical difficulty for the Applicants as they need the variances in order to build a dwelling which is consistent with the evolving character of the neighborhood.
  - 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 Board is convinced that the proposed dwelling and HVAC system are consistent with other homes in Cape Windsor and will be consistent with the evolving character of the neighborhood. The Applicants have demonstrated that they have submitted their plans to the Cape Windsor Community Association and that the Association has approved of the plans. 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 regulations at issue. The Applicants have demonstrated that the variances sought will allow the proposed dwelling and HVAC system to be built in the proposed locations while also providing the Applicants with off-street parking.

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. John Mills, Mr. Norman Rickard, and Mr. Brent Workman. No Board Members voted against the Motion to approve the variance application. Mr. Jeff Hudson did not participate in the vote or discussion of this 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 June 9, 2015.