

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: TENLY'S HOME REPAIR

(Case No. 11594)

A hearing was held after due notice on June 22, 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 rear yard and side yard setback requirements.

Findings of Fact

The Board found that the Applicant was seeking variances of five (5) feet from the twenty (20) feet rear yard setback requirement for a proposed porch and deck, a variance of 8.2 feet from the ten (10) feet side yard setback requirement for a proposed HVAC, a variance of 9 feet from the ten (10) feet side yard setback requirement for a proposed outdoor shower, and a variance of 5 feet from the ten (10) feet side yard setback requirement for a proposed dwelling. This application pertains to certain real property located on the west side of Tyler Avenue approximately 221 feet south of Lincoln Drive (911 Address: 38758 Tyler Avenue, Selbyville); said property being identified as Sussex County Tax Map Parcel Number 5-33-20.14-37.00.

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 April 2, 2015.
2. The Board found that the Office of Planning & Zoning did not receive any correspondence regarding the Application.
3. Doug Tenly was sworn in to testify about the Application.
4. The Board found that Mr. Tenly testified that he is the builder for the Applicant.
5. The Board found that Mr. Tenly testified that the lot measures approximately 50 feet by 90 feet which makes the Property unique.
6. The Board found that Mr. Tenly testified that the side yard variance for the proposed dwelling, HVAC, and outside shower allow room on the opposite side of the dwelling for parking.
7. The Board found that Mr. Tenly testified that the variances will not alter the character of the neighborhood. The proposed dwelling will be located in a location similar to other dwellings in the development.
8. The Board found that Mr. Tenly testified that the difficulty has not been created by the Applicant.
9. The Board found that Mr. Tenly testified that the development does not permit parking on the street.
10. The Board found that Mr. Tenly testified that there have been numerous variances issued in the development and that the Property will be developed in a similar fashion as three other homes nearby which were recently placed.
11. The Board found that Mr. Tenly testified that the variances requested are the minimum variances to afford relief.
12. The Board found that Mr. Tenly testified that the home will be 7.2 feet from Tyler Avenue so as to be able to provide parking in the front yard as well.
13. The Board found that no parties appeared in support of or in opposition to the Application.
14. 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 unique characteristics of this Property limit the buildable area available to the Applicant and have created an exceptional practical difficulty for the Applicant. The uniqueness of the Property is evident when reviewing the survey submitted by the Applicant.
- b. Due to the uniqueness of the lot, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Applicant seeks to construct a dwelling with a deck, porch, outdoor shower, and HVAC unit of reasonable size but is 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 a deck, porch, outdoor shower, and HVAC unit to be constructed on the Property. The Board is convinced that the size, shape, and location of dwelling with a deck, porch, outdoor shower, and HVAC unit are reasonable, which is confirmed when reviewing the survey.
- c. The exceptional practical difficulty was not created by the Applicant. The Applicant did not create the unusual size of the Property. The lot was created many years ago when the community of Cape Windsor was developed. The unique characteristics of the Property, which are clear when reviewing the survey, have created an exceptional practical difficulty. The small size of the lot has created a small building envelope which limits development. Furthermore, the community does not allow for on-street parking so it is necessary that the Applicants park vehicles on the Property. Accordingly, it is necessary that any home be developed in such a way as to provide for parking on the lot. It is clear to the Board that the exceptional practical difficulty was not created by the Applicant.
- 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 unrebutted testimony confirms that the Property is being developed in a manner similar to other properties in the neighborhood, including an adjacent property. Lots in Cape Windsor are being developed so as to place utilities on one side of the home while leaving space on the other side of the lot and in the front yard for parking. The proposed development of this property is consistent with other nearby development. The Board is convinced that the proposed development will not alter the character of the neighborhood. Furthermore, 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 dwelling with a deck, porch, outdoor shower, and HVAC unit to be constructed on the Property and no further variance is requested.

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 August 4, 2015