

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: JAMES BOOTHE & KELLI BOOTHE

(Case No. 11599)

A hearing was held after due notice on July 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 and rear yard setback requirements.

Findings of Fact

The Board found that the Applicants are seeking a variance of five (5) feet from the ten (10) feet side yard setback requirement and a variance of five (5) feet from the twenty (20) feet rear yard setback requirement for a proposed dwelling. This application pertains to certain real property located on the west side of Grant Avenue, approximately 367 feet south of Lincoln Drive (911 Address: 38753 Grant Avenue Ext., Selbyville); said property being identified as Sussex County Tax Map Parcel Number 5-33-20.14-25.00.

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 May 5, 2015.
2. The Board found that the Office of Planning & Zoning received had not received any correspondence regarding the Application.
3. James Boothe and Irving Harbough 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 to review.
4. The Board found that Mr. Fuqua stated that the Property is located in the Cape Windsor community. The development was once a seasonal manufactured home park and is evolving into a community of year-around, single family residences.
5. The Board found that Mr. Fuqua stated that a manufactured home was removed prior to the Applicants' purchase of the Property.
6. The Board found that Mr. Fuqua stated that Cape Windsor has unique setback requirements.
7. The Board found that Mr. Fuqua stated that the small lot is under 5,000 square feet in size.
8. The Board found that Mr. Fuqua stated that the Applicants intend to build a new dwelling which will measure 27 feet by 58 feet. The proposed dwelling is similar to other dwellings in the area.
9. The Board found that Mr. Fuqua stated that the variances are necessary to enable reasonable use of the property.
10. The Board found that Mr. Fuqua stated that the difficulty was not created by the Applicants.
11. The Board found that Mr. Fuqua stated that the lot is the same size as the lot when Cape Windsor was originally created.
12. The Board found that Mr. Fuqua stated that the variances are the minimum variances to afford relief as they will enable the Applicants to construct a reasonable modern home on the lot.
13. The Board found that Mr. Fuqua stated that there have been numerous variances granted in the development.

14. The Board found that Mr. Fuqua stated that the community is unique due to the size of the lots and that practical difficulties exist due to the lot size.
15. The Board found that Mr. Fuqua stated that the variances will not alter the essential character to the neighborhood.
16. The Board found that Mr. Boothe, under oath, confirmed the statements made by Mr. Fuqua.
17. The Board found that Mr. Boothe testified that the dwelling will be on nine (9) feet pilings and that the proposed HVAC unit will meet setback requirements.
18. The Board found that Mr. Harbough testified that the HVAC system will be placed under the stairs or landing on the south side of the dwelling.
19. The Board found that no parties appeared in support of or in opposition to the Application.
20. 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 unique size. The Property is quite small as evidenced by the survey 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 who seek to construct a new home on the lot.
 - b. Due to the uniqueness of the lot, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property has a unique size and the buildable area thereof is limited due to its size and unique setback requirements in the Cape Windsor community. 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 to be constructed on the Property. The Board is convinced that the size, shape, and location of this dwelling are reasonable, which is confirmed when reviewing the survey provided by the Applicants.
 - c. The exceptional practical difficulty was not created by the Applicants. The Applicants did not create the unusual size of the Property. The un rebutted testimony confirms that the lot size was created when Cape Windsor was originally developed. The unique lot size and setback requirements in Cape Windsor have resulted in a limited building envelope on the Property and the small building envelope has created the exceptional practical difficulty. The unique characteristics of the Property are clear when reviewing the survey. The Board is convinced that the exceptional practical difficulty was not created by the Applicants but was created by the size of the lot and the Cape Windsor setback requirements.
 - 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 dwelling will have no effect on the character of the neighborhood. Cape Windsor was originally developed as a manufactured home community for singlewide homes. The community has since evolved into a community with larger dwellings such as the one proposed by the Applicants and the proposed dwelling is consistent with structures typically found in a residential community such as Cape Windsor. Similar variances have also been granted in the area. 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 Applicant to construct a reasonably sized dwelling on the Property.

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 18, 2015.