

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: JOSEPH SORIANO, JR. AND MARYELLEN SORIANO

(Case No. 11674)

A hearing was held after due notice on December 14, 2015. The Board members present were: Mr. Dale Callaway, Mr. John Mills, Mr. Jeff Hudson, Mr. Norman Rickard, and Mr. Brent Workman.

Nature of the Proceedings

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

Findings of Fact

The Board found that the Applicants were seeking a variance of 5.4 feet from the twenty (20) feet rear yard setback requirement for an existing dwelling, a variance of 8.3 feet from the twenty (20) feet rear yard setback requirement for an existing open deck, a variance of 0.6 feet from the five (5) feet side yard setback requirement for an existing shed, a variance of 1.9 feet from the five (5) feet front yard setback requirement for an existing dwelling, a variance of 5.6 feet from the ten (10) feet side yard setback requirement for an existing dwelling, a variance of 9.8 feet from the ten (10) feet side yard setback requirement for an existing set of steps, a variance of 9.2 feet from the ten (10) feet side yard setback requirement for an existing HVAC platform, a variance of 6.4 feet from the ten (10) feet side yard setback requirement for an existing cantilevered window, and a variance of 3.5 feet from the ten (10) feet side yard setback requirement for an existing dwelling. This application pertains to certain real property located on the west side of Taft Avenue approximately 50 feet south of Lighthouse Road (911 Address: 38808 Taft Avenue, Selbyville); said property being identified as Sussex County Tax Map Parcel Number 5-33-20.14-73.00.

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 July 22, 2015.
2. The Board found that the Office of Planning and Zoning had not received any correspondence in support of or in opposition to the Application.
3. Ray Tomasetti and Jill Cizerski were sworn in to testify about the Application.
4. The Board found that Mr. Tomasetti testified that he has personal knowledge of the Property as he handled the settlement of the Property in 1985 for the previous owners.
5. The Board found that Mr. Tomasetti testified that an existing 1972 manufactured home was replaced in 1980 by the original owner. In 1985 the Property was sold and the buyers did not obtain a survey.
6. The Board found that Mr. Tomasetti testified that the previous owner passed away two (2) years ago and this dwelling was the previous owner's primary residence. He obtained proper permits for the deck, porch and shed on the Property.
7. The Board found that Mr. Tomasetti testified that the previous owners were unaware of any encroachments.
8. The Board found that Mr. Tomasetti testified that the Applicants purchased the Property earlier this year and the survey completed on July 22, 2015 showed the encroachments.
9. The Board found that Mr. Tomasetti testified that the manufactured home is classified as a Class "C" dwelling with Assessment Division.
10. The Board found that Mr. Tomasetti testified that the lot is unique in size and measures 50 feet wide by 89 feet deep.

11. The Board found that Mr. Tomasetti testified that the difficulty was not created by the Applicants.
12. The Board found that Mr. Tomasetti testified that the home was placed by a prior owner in 1980. The deck was placed in 1985 and the shed was placed in 1994.
13. The Board found that Mr. Tomasetti testified that the variances do not alter the essential character of the neighborhood. Other homes in the development are similarly situated on their lots.
14. The Board found that Mr. Tomasetti testified that the variances sought are the minimum variances to afford relief.
15. The Board found that Mr. Tomasetti testified that there have been no previous complaints from neighbors or the Homeowners Association.
16. The Board found that Mr. Tomasetti submitted pictures of the Property to the Board to review.
17. The Board found that one (1) party appeared in support of the Application.
18. The Board found that no parties appeared 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 unique size. The Property is quite small and is located adjacent to a lagoon as evidenced by the survey. 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 retain an existing 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 shape and the buildable area thereof is limited due to its size and shape. The Applicants seek to retain a dwelling and related structures 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 and related structures to remain on the Property. The Board is convinced that the size, shape, and location of these structures are reasonable, which is confirmed when reviewing the survey and pictures provided by the Applicants.
 - c. The exceptional practical difficulty was not created by the Applicants. The Applicants did not create the unusual size or shape of the Property. Cape Windsor was originally developed as a community for smaller, singlewide manufactured homes with small lot sizes. The unique lot size has resulted in a limited building envelope on the Property and the small building envelope has created the exceptional practical difficulty. Furthermore, the dwelling was placed on the Property by a prior owner and has been in its present location since 1980. Other structures on the Property have been in their current locations for many years as well. 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 the lot's unique characteristics and by the placement of the structures thereon by prior owners.
 - 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. The dwelling has been on the Property

since 1980 and the other structures on the Property have been in their present locations for many years as well. Despite the longstanding locations of these structures, no complaints were noted in the record about the locations of the structures. 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 Applicants to retain a reasonably sized dwelling and related structures on the Property. The Applicants do not intend to make any additions to the structures and only seek the variances to allow the existing structures to remain in their current 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 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 January 26, 2016