

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

**IN RE: KURT MILLER**

**(Case No. 11832)**

A hearing was held after due notice on September 12, 2016. 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 a variance from the side yard setback requirement.

Findings of Fact

The Board found that the Applicant is seeking a variance of 1.1 feet from the ten (10) feet side yard setback requirement on the east side for a proposed dwelling. This application pertains to certain real property located on the southeast end of Cleveland Avenue approximately 1,114 feet south of Lincoln Drive (911 Address: 38853 Cleveland Avenue, Selbyville); said property being identified as Sussex County Tax Map Parcel Number 5-33-20.18-120.00.

1. The Board was given copies of the Application, an aerial photograph of the Property, a survey of the Property dated June 28, 2016, an elevation certificate, and a portion of the tax map.
2. The Board found that the Office of Planning & Zoning received no correspondence in support of or in opposition to the Application.
3. The Board found that Douglas Tenly was sworn in to testify about the Application. Mr. Tenly submitted a survey of the Property dated September 8, 2016.
4. The Board found that Mr. Tenly testified that the proposed dwelling will be on block foundation but will be in the same location as noted on the survey.
5. The Board found that Mr. Tenly testified that the Property is located in the Cape Windsor development.
6. The Board found that Mr. Tenly testified that the lot is unique in size since it is only forty-four (44) feet wide, which is smaller than most lots in the development.
7. The Board found that Mr. Tenly testified that the Applicant is trying to build the house as narrow as possible. The proposed dwelling will be 25.7 feet wide, which is narrower than an average size dwelling.
8. The Board found that Mr. Tenly testified that the Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code.
9. The Board found that Mr. Tenly testified that the exceptional practical difficulty was not created by the Applicant.
10. The Board found that Mr. Tenly testified that the proposed dwelling will not alter the character of the neighborhood.
11. The Board found that Mr. Tenly testified that the development was originally a manufactured home park and the original manufactured homes are now being replaced with 2 and 3 story dwellings.
12. The Board found that Mr. Tenly testified that the variance requested is the minimum variance necessary to afford relief.
13. The Board found that Mr. Tenly testified that ten (10) feet is needed on the west side of the Property to allow room for parking.
14. The Board found that no parties appeared in support of or in opposition to the Application.
15. 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 clearly unique as it is a small, narrow lot. The Property consists of only 5,455 square feet; as is clearly shown on the survey. The Property is quite narrow as it is only 44.71 feet wide. Most of the other lots in the Cape Windsor development are 50 feet wide, which is also small. The small size of the Property has created an unusual and limited building envelope for the Applicant which has created an exceptional practical difficulty for the Applicant who wishes to build the dwelling on the Property.
- b. Due to the uniqueness of the Property, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Applicant seeks to build a narrow dwelling but is unable to do so without violating the Sussex County Zoning Code. The Board is convinced that the variance is necessary to enable the reasonable use of the Property as the variance will allow the proposed dwelling to be constructed on the Property. The Board is convinced that the shape and location of this dwelling are reasonable, which is confirmed when reviewing the survey provided by the Applicant. The Board notes that the dwelling is only 25.7 feet wide which is narrower than other homes in the neighborhood and it is unlikely that a narrower home could be placed on the lot.
- c. The exceptional practical difficulty was not created by the Applicant. The Applicant did not create the unusual size and narrowness 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. 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 Applicant but was created by the lot's unique characteristics.
- d. The variance 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 has evolved from a community of single-wide manufactured homes to a community of stick-built dwellings. This dwelling fits with the evolving nature of Cape Windsor. Furthermore, no evidence was presented which would indicate that the variance would somehow alter the essential character of the neighborhood or be detrimental to the public welfare.
- e. The variance sought is the minimum variance necessary to afford relief and the variance requested represents the least modification possible of the regulation at issue. The Applicant has demonstrated that the variance sought will allow the Applicant to construct a reasonably sized dwelling on the Property. The dwelling is narrower than other homes in the area and the Board is convinced that the Applicant has attempted to minimize the need for the variance with the design of this dwelling. Notably, the dwelling encroaches only slightly more than one foot into the setback area.

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 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 November 9, 2016