

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: MICHAEL J. BAIER & HOPE C. BAIER

(Case No. 11866)

A hearing was held after due notice on November 7, 2016. The Board members present were: Mr. Dale Callaway, Mr. John Mills, Mr. Jeff Hudson, 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 Applicants are seeking a variance of 6.5 feet from the ten (10) feet side yard setback requirement on the south side for a dwelling, a variance of 9.6 feet from the ten (10) feet side yard setback requirement on the south side for a set of stairs, a variance of 5.7 feet from the ten (10) feet side yard setback requirement on the south side for a dwelling, a variance of 5.8 feet from the ten (10) feet side yard setback requirement on the south side for a four season room, and a variance of eight (8) feet from the ten (10) feet side yard setback requirement on the south side for a deck.. This application pertains to certain real property located on the west side of Cleveland Avenue approximately 160 feet south of Lincoln Drive (911 Address: 38768 Cleveland Avenue, Selbyville); said property being identified as Sussex County Tax Map Parcel Number 5-33-20.14-50.00.

1. The Board was given copies of the Application, a survey of the Property dated September 9, 2016, an aerial photograph of the Property, 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 Michael Baier was sworn in to testify about the Application. Ray Tomasetti, Esquire, presented the case to the Board on behalf of the Applicants and submitted pictures for the Board to review.
4. The Board found that Mr. Tomasetti stated that an existing fence has been removed by the Applicants.
5. The Board found that Mr. Tomasetti stated that the adjacent neighbor has been granted a similar variance.
6. The Board found that Mr. Tomasetti stated that the Applicants are the third owners of the Property and a survey completed on September 21, 2016, showed the encroachments.
7. The Board found that Mr. Tomasetti stated that the lot measures 50 feet wide by 90 feet deep.
8. The Board found that Mr. Tomasetti stated that the setbacks in Cape Windsor were previously 5 feet and the manufactured home was likely placed on the lot and believed to be in compliance with that setback requirement.
9. The Board found that Mr. Tomasetti stated that there is no on street parking permitted in Cape Windsor so the dwelling is set further to the south side to allow room for parking.
10. The Board found that Mr. Tomasetti stated that the Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code.
11. The Board found that Mr. Tomasetti stated that the Applicants do not plan to move the manufactured home.
12. The Board found that Mr. Tomasetti stated that the manufactured home has been on the Property since 1973 and the additions were added later.

13. The Board found that Mr. Tomasetti stated that the difficulty has not been created by the Applicants.
14. The Board found that Mr. Tomasetti stated that the variances will not alter the character of the neighborhood. The Applicant has spoken with his neighbor and the neighbor does not object to the variance.
15. The Board found that Mr. Tomasetti stated that the variances are the minimum variances necessary to afford relief though the Applicants will have to come back to the Board for a rear yard variance for four season room as the need for the rear yard variance was not discovered until after the Application was filed.
16. The Board found that Mr. Baier, under oath, affirmed the statements made by Mr. Tomasetti.
17. The Board found that Mr. Baier testified that he spoke to his neighbors and they have no objection to the Application.
18. The Board found that Mr. Baier testified that he purchased the Property in September 2016 and that he plans to make no additions to the structures at this time.
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 clearly unique as it is a small and narrow lot. The Property was created by a prior owner and consists of only 4,493 square feet; as is clearly shown on the survey. The small size of the Property has created an exceptional practical difficulty for the Applicants and this difficulty is exacerbated by the narrowness of the Property which is only 50 feet wide. These unique physical conditions have created an unusual and limited building envelope for the Applicants.
 - b. Due to the uniqueness of the Property, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The dwelling was constructed many years ago and the Applicants seek to retain the dwelling and structures on the same footprint 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 the dwelling and structures to remain on the Property. The Board is convinced that the shape and location of this dwelling and structures 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 Property was created by a prior owner and is an undersized lot with an unusual narrowness. The Board notes that the Property is narrow which greatly limits the building envelope of the lot. The building envelope is further limited due to the lack of off-street parking in Cape Windsor which necessitates that cars park on the Property. The Applicants did not build the dwelling or create the size and shape of the lot. Rather, those conditions pre-existed the Applicants' acquisition of the Property. These unique physical conditions have resulted in a limited building envelope and have created the exceptional practical difficulty for the Applicants.
 - 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 dwelling and structures have been on the Property for many years without recorded

complaints and no changes to those structures are being proposed. Despite the longstanding location of the structures and notification to neighbors, no complaints were noted in the record about its location. 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. Except as otherwise noted below, 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 the structures on the Property. No additions to those structures are being proposed. The Board notes, however, that the Applicants will also need a rear yard variance as that variance was not requested in this application.

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, and Mr. Brent Workman. No Board Member voted against the Motion to approve the variance application. Mr. Norman Rickard did not participate in the discussion or vote 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 January 10, 2017