

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

**IN RE: NICHOLAS J. D'ASCOLI**

**(Case No. 11867)**

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 five (5) feet from the ten (10) feet side yard setback requirement on the west side, a variance of 0.5 feet from the required ten (10) feet side yard setback requirement on the east side, and a variance of 0.3 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 side of the dead end of the Taft Avenue approximately 390 feet southwest of Old Lighthouse Road (911 Address: 38835 Taft Avenue, Selbyville); said property being identified as Sussex County Tax Map Parcel Number 5-33-20.18-166.00.

1. The Board was given copies of the Application, drawings of the proposed dwelling, a survey of the Property dated June 7, 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 Gerald D'Ascoli and Nick D'Ascoli were sworn in to testify about the Application. Raymond Tomasetti, Esquire, presented the case to the Board on behalf of the Applicants and submitted exhibits for the Board to review.
4. The Board found that Mr. Tomasetti stated that the Applicants plan to remove the existing manufactured home located on the Property and construct a new dwelling.
5. The Board found that Mr. Tomasetti stated that the Cape Windsor Community Association has no objection to the Application. Neighbors also support the Application.
6. The Board found that Mr. Tomasetti stated that the Property has been in the Applicants' family since 1970 and the existing structure was placed on the Property in 1986. The Applicants' parents passed away in 2014 thereby leaving the Property to their children.
7. The Board found that Mr. Tomasetti stated that the proposed dwelling will be placed so as to provide better parking and turn around area since the Property is located along a dead end street.
8. The Board found that Mr. Tomasetti stated that the existing structure encroaches farther into the side yard setback on the lagoon side of the Property than the proposed dwelling will encroach.
9. The Board found that Mr. Tomasetti stated that the Property has frontage of 45.65 feet and is a narrow lot.
10. The Board found that Mr. Tomasetti stated that the depth of the lot allows room to move the dwelling farther back on the lot without encroaching the rear yard setback requirement.
11. The Board found that Mr. Tomasetti stated that the existing dwelling violates the setback requirements.
12. The Board found that Mr. Tomasetti stated that the variances requested are the minimum necessary to afford relief.

13. The Board found that Mr. Tomasetti stated that the proposed dwelling will not alter the essential character of the neighborhood.
14. The Board found that Gerald D'Ascoli and Nicholas D'Ascoli, under oath, affirmed the statements made by Mr. Tomasetti.
15. The Board found that Gerald D'Ascoli testified that the proposed dwelling will be approximately 4,400 square feet in size, including the garage and decks. The garage will be located underneath the dwelling.
16. The Board found that Gerald D'Ascoli testified that the dwelling will be for the personal use of their families.
17. The Board found that Gerald D'Ascoli testified that, during Hurricane Sandy, the Applicants experienced flood issues and damage to the existing structure.
18. The Board found that Gerald D'Ascoli testified that the Property narrows.
19. The Board found that Gerald D'Ascoli testified that there is no cul-de-sac off of Taft Avenue.
20. The Board found that Gerald D'Ascoli testified that the Applicants looked at numerous house plans to find a dwelling that could be built in compliance with the setback requirements.
21. The Board found that Gerald D'Ascoli testified that the narrowness of the Property prevents a dwelling from being built in strict conformity with the Sussex County Zoning Code.
22. The Board found that Gerald D'Ascoli testified that a portion of the building envelope is needed for the parking and turn-around areas.
23. The Board found that no parties appeared in support of or in opposition to the Application.
24. 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 prior to the Applicants' acquisition thereof and consists of only 5,488 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 45.65 feet wide. Furthermore, the Property is bordered on two sides by water and has experienced flooding issues. The Board also notes that the Property is adjacent to Taft Avenue which is a dead end street with no cul-de-sac. The lack of a cul-de-sac and off-street parking has also created an exceptional practical difficulty because a significant portion of the building envelope will be used for parking rather than the dwelling. 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 construct a new dwelling 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 the 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 Applicants. The Board notes that the previous dwelling also encroached into the setback areas.
  - c. The exceptional practical difficulty was not created by the Applicants. The Property was created and developed prior to the Applicants' acquisition

thereof. The Property is an undersized and narrow lot susceptible to flooding and adjacent to a dead end street with no cul-de-sac or off-street parking. These unique conditions have created a small building envelope that is further reduced by the parking problems in the neighborhood and have created the exceptional practical difficulty for the Applicants.

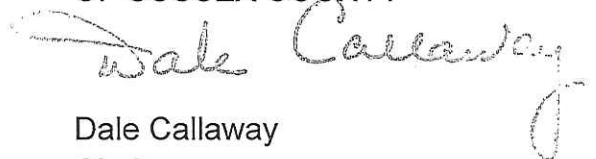
- d. The variances will not alter the essential character of the neighborhood nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare. Based on the drawings and pictures submitted by the Applicants, the proposed dwelling appears to be an improvement over the existing dwelling. Neighbors have indicated support of the Application and the homeowners association does not object to the relief sought by the Applicants. 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 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 build a reasonably sized dwelling on the lot. The Board is convinced that the Applicants have explored other options to minimize the variances needed.

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 on 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