

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: CUSTOM SIDING, INC.

(Case No. 11916)

A hearing was held after due notice on February 6, 2017. The Board members present were: Mr. John Mills, Mr. Jeff Hudson, 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 8.3 feet from the ten (10) feet side yard setback requirement on the north side for a proposed HVAC system, a variance of 8.2 feet from the ten (10) feet side yard setback requirement on the north side for a proposed gas tank, a variance of 5 feet from the twenty (20) feet rear yard setback requirement for a proposed dwelling, and a variance of 5 feet from the ten (10) feet side yard setback requirement on the north side for a proposed dwelling. This application pertains to certain real property located on the east side of Cleveland Avenue approximately 944 feet south of Lincoln Drive (911 Address: 38847 Cleveland Avenue, Selbyville); said property being identified as Sussex County Tax Map Parcel Number 5-33-20.18-122.00.

1. The Board was given copies of the Application, a portion of the tax map of the area, an aerial photograph of the Property, and a survey dated January 9, 2017.
2. The Board found that the Office of Planning & Zoning received no correspondence in support to the Application and received one (1) letter in opposition to the Application. The letter of opposition also contained pictures and exhibits.
3. The Board found that Charles Hayes was sworn in to testify about the Application. Mr. Hayes submitted drawings, pictures, a letter dated January 13, 2017, from the Cape Windsor Community Association, Inc., restrictive covenants, literature on the HVAC system, and a survey of the Property dated January 20, 2003, to the Board to review.
4. The Board found that Mr. Hayes testified that the Property is a canal front lot in Cape Windsor and is narrow.
5. The Board found that Mr. Hayes testified that he received a letter of acceptance from the Cape Windsor Community.
6. The Board found that Mr. Hayes testified that the proposed dwelling will look proportionate to the lot and other homes in the neighborhood and the proposed variances are similar to variances granted to other properties in the development.
7. The Board found that Mr. Hayes testified that other homes in the neighborhood have received variances of 5 feet from the side yard setback requirement.
8. The Board found that Mr. Hayes testified that the community has evolved from a mobile home park to a community with stick-built homes and there are several new homes in the development.
9. The Board found that Mr. Hayes testified that the proposed dwelling will be in line with the homes on neighboring properties.
10. The Board found that Mr. Hayes testified that neighboring dwellings are 15 feet from the canal.
11. The Board found that Mr. Hayes testified that his requests are not out of the ordinary as many variances have been granted to neighboring properties.
12. The Board found that Mr. Hayes testified that the HVAC system cannot be placed in front of the Property but he plans to move the HVAC system closer to Cleveland

- Avenue to accommodate a request from his neighbor. The HVAC unit cannot be located on the south side of the proposed dwelling because landscaping and sidewalks are located there.
13. The Board found that Mr. Hayes testified that all neighboring homes have the HVAC unit located on the north side.
 14. The Board found that Mr. Hayes testified that he is staying within the guidelines of the community.
 15. The Board found that Mr. Hayes testified that the proposed dwelling will be two stories tall and 2,600 square feet in size. The home will be similar to the home on Lot 20 as he built that home a few years ago.
 16. The Board found that Mr. Hayes testified that the previous dwelling on the Property was located only 2 feet from the side yard property line on the north side and the proposed home will be farther away from the side yard property line.
 17. The Board found that Mr. Hayes testified that the previous dwelling was a single story mobile home.
 18. The Board found that Mr. Hayes testified that parking is a major issue within the community and that the variances requested will leave adequate space for extra parking.
 19. The Board found that Mr. Hayes testified that the parking issue is the reason why the proposed dwelling is not closer to the street.
 20. The Board found that Mr. Hayes testified that the garage will hold one vehicle and will be located under the dwelling. He will be able to fit 3 cars in the driveway in the front yard.
 21. The Board found that Mr. Hayes testified that the side yard to the south side will be landscaped with a walkway and no cars will be parked there.
 22. The Board found that Mr. Hayes testified that there is a gap between the front property line and the edge of paving of Cleveland Avenue.
 23. The Board found that Mr. Hayes testified that properties in Cape Windsor are developed in such a way that homes are 5 feet from the side property line and HVAC systems and related structures are placed on that side of the lot and the other side of the lot is used for walkways, parking, and open space. He will develop the Property in this fashion.
 24. The Board found that Ben Moses, Julia Moses, and James Kodlepis were sworn in to testify in opposition of the Application.
 25. The Board found that Mr. Moses testified that he and his wife are the owners of the neighboring property - Lot 18 and they purchased Lot 18 in 1998.
 26. The Board found that Mr. Moses testified that the Applicant built the dwelling on Lot 20.
 27. The Board found that Mr. Moses testified that the five feet side yard variance requested is consistent with neighboring properties and he does not object to that variance request.
 28. The Board found that Mr. Moses testified that he was concerned about the placement of the HVAC system because he hears the HVAC unit located on Lot 20 and the HVAC units are very loud.
 29. The Board found that Mr. Moses testified that he asked the Applicant to move the proposed HVAC unit moved closer to the road and he does not object to the HVAC system provided it is moved closer to Cleveland Avenue.
 30. The Board found that Mr. Moses testified that the only portion of the existing home on the Property which extends farther than 5 feet into the side yard setback area is a small bump-out. Otherwise, the existing home is 5 feet from the side yard property line.
 31. The Board found that Mr. Moses testified that his home consists of 1,400 square feet and is a single story home.

32. The Board found that Mr. Moses testified that his home is 24 feet from the foundation to the canal but he has a deck which is closer to the canal.
33. The Board found that Mr. Moses testified that he has concerns about losing the view of the canal if the Applicant builds the home as proposed.
34. The Board found that Mr. Moses testified that he received a variance for the existing deck and enclosed porch but he consulted with the neighbor before the construction of said deck and porch. He built his home in 1999.
35. The Board found that Mr. Moses testified that his screened-in porch is 12 feet deep and the open deck is 14 feet deep.
36. The Board found that Mr. Moses testified that the rear yard setbacks for dwellings in the neighborhood are not generally 15 feet.
37. The Board found that Mr. Moses testified that he is concerned about the solid, two-story wall of the Applicant's dwelling that will block his views of the canal.
38. The Board found that Mr. Moses testified that his neighbor can see through part of his screened-in porch.
39. The Board found that Mr. Moses testified that he would not object to a single-story screened-in porch on the Applicant's property.
40. The Board found that Mr. Moses testified that most of the rear yard variances are for decks.
41. The Board found that Mr. Moses testified that he has five (5) parking spaces on his lot.
42. The Board found that Mr. Moses testified that he objects only to the proposed rear yard variance and the proposed location of the HVAC unit. He does not object to the HVAC unit being placed closer to Cleveland Avenue.
43. The Board found that Mr. Moses testified that his other concerns are the obstruction of his view from the living room area and the value of surrounding properties.
44. The Board found that Mrs. Moses testified that their home was built at the same time as their neighbor to the north and their neighbor designed his home in a similar manner as the Moses home.
45. The Board found that Mrs. Moses testified that the foundations for those homes are 20 feet from the property line and the decks are 15 feet from the property line.
46. The Board found that Mr. Kodlepis testified that he lives across the street and shares the same opinions as Mr. Moses.
47. The Board found that Phillis Hayes was sworn in to testify in support of the Application.
48. The Board found that Mrs. Hayes testified that Mr. Moses' porch is dark and she is unable to see through the screen.
49. The Board found that Mrs. Hayes testified that Mr. Moses' enclosed porch and deck are 15 feet from the bulkhead.
50. The Board found that Mrs. Hayes testified that Mr. Moses has a large boat parked in his available parking spaces.
51. The Board found that Mrs. Hayes testified that newer homes in the neighborhood are being designed to allow for off-street parking.
52. The Board found that Mr. Hayes testified that other structures in the neighborhood are 15 feet from the rear property line and many homes in the neighborhood are being designed to be 2 stories tall.
53. The Board found that Mr. Hayes testified that Mr. Moses' house is located closer to Cleveland Avenue than the Applicant's proposed home.
54. The Board found that one (1) party appeared in support of the Application.
55. The Board found that three (3) parties appeared in opposition to the Application.
56. The Board tabled the case until February 20, 2017, at which time the Board discussed and voted on the Application.

57. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, 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 Property consists of only 4,507 square feet. The unique characteristics of this Property limit the buildable area available to the Applicant and have created an exceptional practical difficulty for the Applicant who seeks to build a 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. The Applicant seeks to build a dwelling, propane tank, and HVAC system of reasonable size 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 a reasonably sized dwelling, propane tank, and HVAC system to be constructed on the Property. The Board is convinced that the shape and location of the dwelling, propane tank, and HVAC system are also reasonable, which is confirmed when reviewing the survey provided by the Applicant.
 - c. The exceptional practical difficulty was not created by the Applicant. The Applicant did not create the unusual size 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 the lot's unique characteristics. The Board also notes that parking is a problem in the community and the home was moved closer to the rear yard to provide better parking for the Property. The need for parking has also limited the building envelope for the Property.
 - 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, propane tank, and HVAC system 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. Similar variances have also been granted nearby, including variances for the neighbor who opposed the application. The alignment of the dwelling, propane tank, and HVAC system are consistent with the placement of similar structures on other nearby properties. The Board was not convinced by the arguments raised by the opposition that the variances would somehow alter the essential character of the neighborhood.
 - 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 Applicant has demonstrated that the variances sought will allow the Applicant to construct a reasonably sized dwelling, propane tank, and HVAC system on the Property.

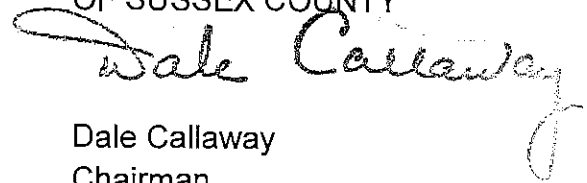
- f. As a condition to approval, the Applicant must move the proposed HVAC system closer to Cleveland Avenue than is shown on the survey dated January 9, 2017.

The Board granted the variance application with conditions 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 with conditions. The Board Members in favor were Mr. Jeff Hudson, Mr. John Mills, and Mr. Brent Workman. No Board Members voted against the Motion to approve the variance application with conditions. Mr. Dale Callaway and 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 April 4, 2017