

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: DAVID J. HODGES & DEBORAH A. HODGES

(Case No. 11924)

A hearing was held after due notice on February 20, 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 front yard, side yard, and rear yard setback requirements.

Findings of Fact

The Board found that the Applicants are requesting a variance of 0.6 feet from the fifteen (15) feet corner side yard setback requirement on the south side for a proposed dwelling, a variance of 10.1 feet from the twenty (20) feet rear yard setback requirement for proposed steps, a variance of 5.6 feet from the fifteen (15) feet corner front yard setback requirement on the south side for proposed steps, a variance of 4.8 feet from the twenty (20) feet rear yard setback requirement for a proposed dwelling, a variance of 7 feet from the ten (10) feet side yard setback requirement on the north side for a proposed HVAC and propane tank, 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 Tyler Avenue approximately 1,156 feet south of Lincoln Drive (911 Address: 38849 Tyler Avenue, Selbyville); said property being identified as Sussex County Tax Map Parcel Number 5-33-20.18-87.00.

1. The Board was given copies of the Application, a portion of the tax map of the area, a survey of the Property dated October 8, 2003, a site plan dated January 9, 2017, a site plan dated January 25, 2017, pictures of neighboring properties, and a letter from the Cape Windsor Community Association, Inc.
2. The Board found that the Office of Planning and Zoning received one (1) letter in support to the Application and received no correspondence in opposition to the Application.
3. The Board found David J. Hodges and Deborah A. Hodges were sworn in to testify about the Application.
4. The Board found that Mr. Hodges testified that the Property is located in the Cape Windsor development. The community was created over 40 years ago under zoning that is non-existent today.
5. The Board found that Mr. Hodges testified that the situation is unique and it is not economically viable to develop the Property without a variance.
6. The Board found that Mr. Hodges testified that the Property cannot be otherwise developed.
7. The Board found that Mr. Hodges testified that a home constructed in compliance with the Sussex County Zoning Code would result in extremely undersized rooms and would adversely affect the overall value and appeal of the home.
8. The Board found that Mr. Hodges testified that a smaller home effects the overall value, appeal, and resale of proposed dwelling and neighboring dwellings.
9. The Board found that Mr. Hodges testified that the Property was purchased by the Applicants in 2003.
10. The Board found that Mr. Hodges testified that the existing dwelling measures 26 feet wide and 60 feet deep and the Sussex County Zoning Code limits the size of the dwelling to 25 feet wide and 41 feet deep.
11. The Board found that Mr. Hodges testified that the existing dwelling is a singlewide manufactured home with a stick built addition constructed by a prior owner.

12. The Board found that Mr. Hodges testified that the exceptional practical difficulty was not created by the Applicants. The Applicants had no involvement with the original development over 40 years ago.
13. The Board found that Mr. Hodges testified that the variances will not alter the essential character of the neighborhood and that there will be no effect on the neighborhood.
14. The Board found that Mr. Hodges testified that the proposed dwelling will be an enhancement to the neighborhood if the Applicants are able to replace the existing dwelling.
15. The Board found that Mr. Hodges testified that Cape Windsor is experiencing a revitalization with the building of newer, modern homes that are slowly replacing older mobile homes.
16. The Board found that Mr. Hodges testified that the new dwelling will meet all construction codes and will be elevated out of the flood plain.
17. The Board found that Mr. Hodges testified that the proposed dwelling will be a modular home with a one vehicle garage for parking.
18. The Board found that Mr. Hodges testified that the proposed dwelling is wider but shorter than the existing dwelling.
19. The Board found that Mr. Hodges testified that the variances requested are the minimum variances necessary to afford relief.
20. The Board found that Mr. Hodges testified that the proposed dwelling will have the same side yard setback on the north side as the existing dwelling and will be located farther from the front yard setback than the existing dwelling. The proposed dwelling will be closer to the rear yard setback line than the existing dwelling but it will be 15 feet from the canal. The proposed dwelling will be nearly 20 feet from the edge of paving of Tyler Avenue in the corner side yard.
21. The Board found that Mr. Hodges testified that the proposed dwelling will line up with the neighboring dwellings in the rear yard but will be farther off of the road in the front yard than most of the neighboring dwellings.
22. The Board found that Mr. Hodges testified that Cape Windsor Community Association has given the Applicants approval.
23. The Board found that Mr. Hodges testified that the proposed dwelling will consist of two stories.
24. The Board found that Mr. Hodges testified that the Property is a corner lot.
25. The Board found that Mr. Hodges testified that tractor trailers often travel Tyler Avenue to make deliveries and the tractor trailers make wide turns. The Applicants designed the house to be located farther off of Tyler Avenue to provide a safe distance from tractor trailers to move.
26. The Board found that Mr. Hodges testified that, recently, a tractor trailer damaged some of his property in making a turn.
27. The Board found that Mr. Hodges testified that moving the home farther from Tyler Avenue also provides better road visibility.
28. The Board found that Mr. Hodges testified that the HVAC and propane tank are placed on that side of home due to the development of the home.
29. The Board found that no parties appeared in support of or in opposition to the Application.
30. 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 as it is only 50 feet wide and 91 feet deep. The Property is also a corner lot and is thus subject to a greater setback requirement than a lot which is only

bordered on one side by a road. The small size of the lot combined with the corner side yard setback requirements have created an unusually small building envelope. The Applicants are further constrained due to the lack of a cul-de-sac nearby. The lack of a cul-de-sac gives large trucks limited space upon which to safely turn when they make deliveries in the neighborhood and often results in those trucks passing over the Property. Consequently, the building envelope is further limited as the Applicants seek to keep the area in the front yard clear for safety reasons. Ultimately, 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 build a new home and related structures 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. As noted above, the buildable area is further limited by the corner yard setback requirements and the truck safety issue. The Applicants seek to building 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 be constructed on the Property. The Board is convinced that the size, shape, and location of these structures are reasonable, which is confirmed when reviewing the site plan provided by the Applicants.
- c. The exceptional practical difficulty was not created by the Applicants. The Applicants did not create the unusual size of the Property; which is quite small. Rather, those conditions pre-existed the Applicants' acquisition of the Property. These conditions were created when the community was designed over 40 years ago by a prior owner. The unique lot size has resulted in a limited building envelope on the Property and the building envelope is further limited by the corner setback requirements and the truck issue previously discussed. The resulting the small building envelope has created the exceptional practical difficulty and the unique characteristics of the Property are clear when reviewing the survey and tax map. The Board is convinced that the exceptional practical difficulty was not created by the Applicants but was created the lot's unique characteristics.
- 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 and structures will have no effect on the character of the neighborhood. The dwelling will replace an older home that will be removed. The new dwelling will be wider than the existing dwelling but will be shorter. The new dwelling will be located farther off of Tyler Avenue than the existing dwelling which should alleviate some of the problems with the truck traffic and will provide greater visibility. The improved visibility should be an improvement to the neighborhood; particularly since the Property is a corner lot where visibility is important. The proposed dwelling will be located closer to the rear yard property line than the existing home but the home will be similar in distance from the canal as other nearby homes. The Board also notes that the pictures provided by the Applicants demonstrate that the proposed dwelling will be similar to other nearby homes. 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.

Rather, the Board received a letter supporting the application from the Cape Windsor Community Association.

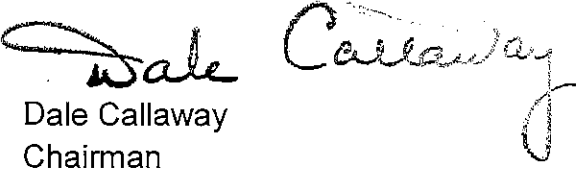
- e. The variances sought are the minimum variances necessary to afford relief and the variances requested represent the least modifications possible of the regulations at issue. The Applicants have demonstrated that the variances sought will allow the Applicants to construct a reasonably sized dwelling and related structures on the Property. The Board finds that the Applicants explored other options for constructing the home and designed the home to limit the encroachments into the setback areas.

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. Jeff Hudson, Mr. John Mills, and Mr. Brent Workman. No Board Members voted against the Motion to approve the variance application. 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.