

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

**IN RE: MIKE MULLEN & CAROL MULLEN**

**(Case No. 12080)**

A hearing was held after due notice on January 8, 2018. The Board members present were: Mr. Dale Callaway, Ms. Ellen Magee, Mr. Bruce Mears, 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 4.6 feet from the twenty (20) feet rear yard setback requirement for a proposed dwelling and a variance of 4.4 feet from the ten (10) feet side yard setback requirement on the south side for a proposed dwelling. This application pertains to certain real property located on the west side of Taft Avenue, approximately 191 feet south of the intersection of Old Lighthouse Road and Taft Avenue. (911 Address: 38818 Taft Avenue, Selbyville); said property being identified as Sussex County Tax Map Parcel Number 5-33-20.18-158.00.

1. The Board was given copies of the Application, an undated survey of the Property, and a portion of the tax map of the area.
2. The Board found that the Office of Planning & Zoning received two (2) letters in support of the Application and no letters in opposition to the Application.
3. The Board found that Mike Mullen was sworn in to testify about the Application.
4. The Board found that Mr. Mullen testified that the Property is located in the Cape Windsor development. The Property measures 50 feet wide by 90 feet deep.
5. The Board found that Mr. Mullen testified that the Applicants propose to construct a retirement home on the Property. The home will measure 34 feet wide with side steps measuring 4 feet wide.
6. The Board found that Mr. Mullen testified that the Applicants are unable to build a home to fit their needs within the building envelope.
7. The Board found that Mr. Mullen testified that the variances will not alter the essential character of the neighborhood.
8. The Board found that Mr. Mullen testified that the home will be an asset to the community.
9. The Board found that Mr. Mullen testified that the HVAC system will be located within the building envelope.
10. The Board found that Mr. Mullen testified that the home will include a two-car garage.
11. The Board found that Mr. Mullen testified that the dwelling is located closer to the rear yard in order to provide parking in the front yard.
12. The Board found that Mr. Mullen testified that the dwelling will be elevated six cinder blocks high but there will not be parking underneath the home.
13. The Board found that Mr. Mullen testified that his neighbors support the Application.
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 unique due to its size. The Property is quite small and is located adjacent to a lagoon as evidenced by the survey. The Property is only 50 feet wide by 89.86 feet deep and consists of less than 4,500 square feet. 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 dwelling on the lot. The Property is also subject to restrictive covenants which limit the buildable area of the Property. Additionally, the front portion of the building envelope is needed for parking so the home is proposed to be set back from Taft Avenue to allow for additional parking in the front yard.
- 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 Applicants seek to build a dwelling of 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 to be constructed on the Property. The Board is convinced that the shape and location of the dwelling are also reasonable, which is confirmed when reviewing the survey 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. 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 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 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. The proposed dwelling fits with the evolving nature of Cape Windsor. No evidence was presented that the variances would somehow alter the essential character of the neighborhood. Rather, the Board received letters of support from neighbors.
- 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 on the Property. The Board is convinced that the Applicants explored other options for the dwelling but were unable to fit a dwelling that would meet their needs on the lot.

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, Ms. Ellen Magee, Mr. Bruce Mears, and Mr. Brent Workman. No Board Member voted against the Motion to approve the variance application. Mr. John Mills did not participate in the discussion or vote on this application.

BOARD OF ADJUSTMENT  
OF SUSSEX COUNTY

  
Dale Callaway  
Chairman

If the use not established within one (1)  
year from the date below the application  
becomes void.

Date March 6, 2018