

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: DAVID COSTELLO

(Case No. 12088)

A hearing was held after due notice on January 22, 2018. The Board members present were: Mr. Dale Callaway, Ms. Ellen Magee, Mr. Bruce Mears, and Mr. John Mills.

Nature of the Proceedings

This is an application for variances from the side yard setback requirement.

Findings of Fact

The Board found that the Applicant is seeking a variance of 5.0 feet from the ten (10) feet side yard setback requirement on the east side for a proposed dwelling, a variance of 4.0 feet from the ten (10) feet side yard setback requirement on the east side for a proposed dwelling, and a variance of 4.0 feet from the ten (10) feet side yard setback requirement on the west side for a proposed HVAC system. This application pertains to certain real property located on the west side of the south end of Cleveland Avenue perpendicular to Cleveland Avenue. (911 Address: 38856 Cleveland Avenue, Selbyville); said property being identified as Sussex County Tax Map Parcel Number 5-33-20.18-117.00.

1. The Board was given copies of the Application, a survey of the Property dated April 21, 2017, a deed to the Property, Minutes for Case No.11318, a survey of the Property dated February 18, 2015, a survey of the Property dated July 12, 2013, an aerial photograph of the Property, and a portion of the tax map of the area.
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 David Costello was sworn in to testify about the Application. Ray Tomasetti, Esquire, presented the case on behalf of the Applicants and submitted exhibits for the Board to review.
4. The Board found that Mr. Tomasetti stated that the Property is located in Cape Windsor.
5. The Board found that Mr. Tomasetti stated that the previous owners (the Sands family) obtained variances in 2014 for a proposed dwelling. The home, however, was never built.
6. The Board found that Mr. Tomasetti stated that an existing manufactured home was located on the Property at that time and that home is still located on the Property.
7. The Board found that Mr. Tomasetti stated that the manufactured home encroaches into the setback areas.
8. The Board found that Mr. Tomasetti stated that the Property was sold to the Applicant in 2016.
9. The Board found that Mr. Tomasetti stated that the Applicant proposes to remove the manufactured home and to construct a dwelling in the same location as the proposed dwelling previously approved by the Board.
10. The Board found that Mr. Tomasetti stated that, in 2014, there was an issue regarding title to the Property and the issue of the lot line. The lot line issue has since been resolved.
11. The Board found that Mr. Tomasetti stated that there is approximately ten (10) feet between the existing manufactured home and the dwelling to the east. The existing dwelling was placed on the Property by a prior owner.
12. The Board found that Mr. Tomasetti stated that the Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code.

13. The Board found that Mr. Tomasetti stated that the exceptional practical difficulty was not created by the Applicant.
14. The Board found that Mr. Tomasetti stated that the variances will not alter the essential character of the neighborhood. Neighboring homes are similarly situated from property lines and the homeowners association has approved the proposed dwelling provided the Board approves the variance requests.
15. The Board found that Mr. Tomasetti stated that the requested variances are the minimum variances necessary to afford relief.
16. The Board found that Mr. Costello affirmed that the statements made by Mr. Tomasetti as true and correct.
17. The Board found that Mr. Tomasetti stated that the Applicant proposes to replace the existing manufactured home with a new home. The dwelling will be on the same footprint as the dwelling proposed to the Board in 2014. The proposed dwelling will measure approximately 25 feet wide and will be stick-built.
18. The Board found that Mr. Tomasetti stated that the new home will encroach less into the side yard setback area closer to Lot 23 than the existing home.
19. The Board found that Mr. Costello testified that the existing manufactured home is approximately 3.5 feet from the side property line shared with Lot 23 and the new home will be 5 feet from that shared property line.
20. The Board found that Mr. Costello testified that the dwelling will have a concrete foundation.
21. The Board found that Mr. Tomasetti stated that an HVAC system will be placed on the west side of the Property. There are no steps on the sides of the dwelling.
22. The Board found that no parties appeared in support of or in opposition to the Application.
23. 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 dredged canal as evidenced by the survey. The Property is only 40 feet wide by 123.55 feet deep and consists of less than 5,000 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 construct a home with an HVAC system on the lot. The Board notes that variances were previously granted for the proposed dwelling the Property but the variance approval lapsed.
 - 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 construct a home with an 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 home with an HVAC system to be constructed on the Property. The Board is convinced that the shape and location of these structures 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 Applicant only recently acquired the Property. 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.

- 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 HVAC system will have no effect on the character of the neighborhood. The structures are similar to the location of homes and HVAC systems on other properties in the neighborhood and the dwelling will encroach less into the side yard setback area than the existing dwelling. No evidence was presented that the variances would somehow alter the essential character of the neighborhood. The homeowners association has also indicated support of this request.
- 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 home with an HVAC system on the Property. The Board is convinced that the Applicant tried to fit the dwelling within the building envelope but was constrained by the narrow width of the Property and the small size of the lot. The Board notes that the proposed dwelling will actually improve the non-conforming width of the dwelling on the Property.

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. John Mills. No Board Member voted against the Motion to approve the variance application. Mr. Brent Workman 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 March 6, 2018