

**BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY
IN RE: ROBERT BURDEKIN & RUTH BURDEKIN**

(Case No. 12147)

A hearing was held after due notice on June 4, 2018. The Board members present were: Mr. Dale Callaway, Mr. Bruce Mears, Ms. Ellen Magee, Mr. John Mills, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for variances from the front yard and side yard setback requirements for existing structures.

Findings of Fact

The Board found that the Applicants are seeking a variance of 3.6 feet from the five (5) feet side yard setback requirement on the north side for existing steps, a variance of 0.6 feet from the five (5) feet front yard setback requirement for an existing dwelling, a variance of 0.5 feet from the five (5) feet front yard setback requirement for an existing dwelling, a variance of 0.3 feet from the five (5) feet side yard setback requirement on the south side for an existing shed, and a variance of 0.8 feet from the five (5) feet front yard setback requirement for an existing shed. This application pertains to certain real property located on the east side of Grant Avenue, approximately 833 feet south of Lincoln Drive. (911 Address 38791 Grant Avenue, Selbyville) said property being identified as Sussex County Tax Map Parcel Number 5-33-20.18-63.00.

1. The Board was given copies of the Application, property record information, a building permit, a Certificate of Compliance, an aerial photograph of the Property, a survey of the Property dated March 16, 2015, pictures, 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 Robert Burdekin was sworn in to testify about the Application. Manaen Robinson, Esquire, presented the Application on behalf of the Applicants.
4. The Board found that Mr. Robinson stated that the Applicants purchased the Property on March 15, 2018 and the survey presented at settlement showed the encroachments.
5. The Board found that Mr. Robinson stated that the Property is a unique, small lot located in Cape Windsor and that the Property is unique due to its size.
6. The Board found that Mr. Robinson stated that the Applicants have no intentions on adding onto the existing structures but the Applicants would incur significant expense to remove the structures.
7. The Board found that Mr. Robinson stated that the dwelling has been on the Property since 1983 and the sheds have been on the Property since 1999. The existing structures cannot be maintained without a variance.
8. The Board found that Mr. Robinson stated that the Property cannot otherwise be developed and the variances are necessary to enable the reasonable use of the Property.
9. The Board found that Mr. Robinson stated that the exceptional practical difficulty was not created by the Applicants.
10. The Board found that Mr. Robinson stated that the variances will not alter the essential character of the neighborhood. Other properties in the neighborhood, for example, have sheds located in similar positions.
11. The Board found that Mr. Robinson stated that the requests are the minimum variances needed to afford relief.

12. The Board found that Mr. Burdekin affirmed the statements made by Mr. Robinson as true and correct.
13. The Board found that Mr. Burdekin testified that there is about three to four feet from the property line to the edge of paving of Grant Avenue and that a portion of the rear yard is in the lagoon.
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 as evidenced by the survey. The Property is 50 feet wide by 90 feet deep and consists of only 4,500 square feet. A portion of the rear yard is also located in a lagoon. 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 retain existing 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. The Applicants seek to retain existing structures on the lot 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 reasonably sized, existing structures to remain on the lot. 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 Applicants.
 - c. The exceptional practical difficulty was not created by the Applicants. The Applicants did not create the unusual size and shape 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 difficulty caused by the small size of the lot is exacerbated due to the fact that a portion of the rear yard is located in a lagoon. 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 by 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 structures will have no effect on the character of the neighborhood. These structures have been on the Property for quite some time without noted complaints in the record. No evidence was presented that the variances would somehow alter the essential character of the neighborhood. The lack of evidence is telling since, if the structures had somehow altered the essential character of the neighborhood, the Board would expect some evidence thereof. The Applicant also provided photographs demonstrating that similar structures are located in the neighborhood. The Board also notes that the front property line is approximately 3-4 feet from the edge of paving thereby giving the impression that the front of the property larger than it actually is.


- 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 retain existing structures. No additions or modifications to the structures are proposed.

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

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY


John Mills
Chairman

If the use is not established within two (2) years from the date below the application becomes void.

Date August 7, 2018