

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

**IN RE: WILLIAM BARRY & OLLIE JEAN CREGAN**

**(Case No. 12261)**

A hearing was held after due notice on February 4, 2019. The Board members present were Mr. Dale Callaway, Ms. Ellen Magee, Mr. John Mills, and Mr. Brent Workman.

Nature of the Proceedings

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

Findings of Fact

The Board found that the Applicants are seeking a variance of 1.3 feet from the five (5) feet front yard setback requirement for an existing shed, a variance of 3.6 feet from the five (5) feet side yard requirement on the south side for existing stairs, a variance of 6.0 feet from the fifteen (15) feet rear yard setback requirement for an existing screen porch, a variance of 5.8 feet from the fifteen (15) feet rear yard setback requirement for an existing screen porch, and a variance of 3.2 feet from the five (5) feet side yard setback requirement on the south side for existing HVAC equipment. This application pertains to certain real property located on the west side of Tyler Avenue approximately 25 feet south of Lincoln Drive in the Cape Windsor subdivision (911 Address: 38736 Tyler Avenue, Selbyville); said property being identified as Sussex County Tax Map Parcel Number 5-33-20.14-33.00.

1. The Board was given copies of the Application, a survey of the Property dated September 10, 2018, a deed to the Property, minutes for Case No. 5485, a drawing, photographs, letters of no objection from neighbors, 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 seven (7) letters in support of the Application and no correspondence in opposition to the Application.
3. The Board found that William Cregan was sworn in to give testimony. Raymond Tomasetti, Esquire, presented the Application on behalf of the Applicants.
4. The Board found that Mr. Tomasetti stated that the previous owners acquired the Property in 1992 and they obtained variances in 1994 for a house and porch. The prior owners replaced a manufactured home with a Nanticoke Home and porch at that time. The shed and HVAC system, however, were not shown on the survey at that time but a drawing of the proposed dwelling also showed the shed. A certificate of occupancy was thereafter issued.
5. The Board found that Mr. Tomasetti stated that the Applicants purchased the Property last year and, when the survey was completed, it showed the HVAC system and the steps, and their encroachments into the setback areas. Furthermore, the new survey shows the measurements for the shed and screen porch were incorrect on the original application in 1994.
6. The Board found that Mr. Tomasetti stated that the Applicants want to bring the Property into compliance.
7. The Board found that Mr. Tomasetti stated that neighbors support the Application.
8. The Board found that Mr. Tomasetti stated that the lots are 40-50 feet wide in the neighborhood and that the Property is unique as it is a small lot and very shallow.
9. The Board found that Mr. Tomasetti stated that the variances are necessary to keep the Property as it has been for at least twenty-four years and the Property cannot be developed otherwise.

10. The Board found that Mr. Tomasetti stated that the variances are necessary to enable the reasonable use of the Property.
11. The Board found that Mr. Tomasetti stated that this was not created by the Applicants but by the previous owner.
12. The Board found that Mr. Tomasetti stated that the variances will not alter the essential character of the neighborhood as the home has not been changed in twenty-four years and there are a number of other homes with similar porches and sheds.
13. The Board found that Mr. Tomasetti stated that neighboring lots also have encroachment problems. The neighbor to the south, for example, has a shed which encroaches onto the shared property line.
14. The Board found that Mr. Tomasetti stated that the requests are the minimum variances necessary to afford relief and are the least modifications possible of the regulations at issue.
15. The Board found that Mr. Cregan affirmed the statements made by Mr. Tomasetti as true and correct.
16. The Board found that Mr. Cregan testified that the Applicants have not made any improvements to the Property since purchasing it.
17. The Board found that no one appeared in support of or in opposition to the Application.
18. 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 because it is a small and shallow lot. These conditions greatly limit the building envelope and have created an exceptional practical difficulty for the Applicants who seek to retain existing structures thereon. Furthermore, the lot was developed by a prior owner 24 years ago with the existing structures. While variances were obtained for the house and porch, the prior owners failed to obtain variances for the shed and HVAC system even though both structures appear to have been on the Property at that time. Additionally, the prior variances appear to incorrectly identify the size of the rear yard encroachments. The Board notes that the minutes from the prior application identify the Property as measuring 50 feet wide by 90 feet deep but the Property is actually 88.44 feet deep so the error in the rear yard variance may be related to that discrepancy.
  - b. Due to the uniqueness of the Property, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property has a unique size and shallowness and the buildable area thereof is limited due to these conditions. 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 the Applicants to retain those structures. The Board is convinced that the size, shape, and location of these structures are also reasonable.
  - c. The exceptional practical difficulty was not created by the Applicants. The Applicants did not create the unusual size and shallowness of the lot. These unique conditions have 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. Furthermore, the Property was developed by a

prior owner 24 years ago and these structures have been on the lot for many years. There was no evidence that the existence of these encroachments was due to the actions of the Applicants.

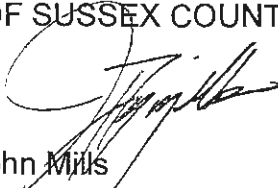
- d. The variances will not alter the essential character of the neighborhood nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare. The Board is convinced that the variances will have no adverse effect on the character of the neighborhood. The variances will allow the Applicants to retain the existing structures on the lot and no additions to those structures are proposed. The structures have been on the Property for 24 years and, despite notification to neighbors of the Application, no complaints were noted in the record. The lack of complaints is telling because if the variances somehow altered the essential character of the neighborhood, the Board would expect opposition to present such evidence. Rather, no evidence was presented that the variances would somehow alter the essential character of the neighborhood or be detrimental to the public welfare.
- 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 those 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. 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 March 19, 2019.