

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: JOHN NORMAN & CONSTANCE NORMAN

(Case No. 12292)

A hearing was held after due notice on April 15, 2019. The Board members present were: Mr. Dale Callaway, Ms. Ellen Magee, Mr. John Mills, Mr. John Williamson, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for variances from the side yard setback requirements for proposed structures.

Findings of Fact

The Board found that the Applicants are seeking variances of 4.9 feet from the five (5) feet side yard setback requirement on the north side for proposed steps, propane tank, landing, and HVAC system. This application pertains to certain real property located on the east side of Wilson Avenue, approximately 350 feet south of Lincoln Drive in the Cape Windsor Subdivision (911 Address: 38797 Wilson Avenue, Selbyville) said property being identified as Sussex County Tax Map Parcel Number 5-33-20.18-155.00.

1. The Board was given copies of the Application, a survey of the Property dated January 21, 2019, findings of fact for Case No. 12144, photographs of the area, 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 Constance Norman was sworn in to testify about the Application. Ms. Norman submitted pictures and a letter of support to the Board to review.
4. The Board found that Ms. Norman testified that the Property is located in Cape Windsor which is a former manufactured home park. The lot was previously developed by a 1978 double-wide manufactured home and related structures. The steps and HVAC system were located in the side yard and were on the Property when the Applicants purchased the Property.
5. The Board found that Ms. Norman testified that the Property measures 50 feet wide by 85 feet deep.
6. The Board found that Ms. Norman testified that the Applicants suffered considerable flooding following Hurricane Sandy and they looked to raise the prior home but it was not feasible.
7. The Board found that Ms. Norman testified that the proposed home will be 4 feet wider than the current home making it compliant with the Americans with Disabilities Act and will accommodate an elevator. The proposed house will consist of 1,567 square feet.
8. The Board found that Ms. Norman testified that the house cannot be moved 4 feet to accommodate the steps, landing, propane tank, and HVAC due to the placement of the Delmarva Power transformer in front of the home which restricts parking on that side of the lot.
9. The Board found that Ms. Norman testified that the Applicants are trying to preserve green space and parking areas.
10. The Board found that Ms. Norman testified that there will be room for off-street parking under the home and the proposed location of the house will afford additional off-street parking. The house will have a 10 feet tall concrete foundation.
11. The Board found that Ms. Norman testified that the streets are too narrow to park along the streets.

12. The Board found that Ms. Norman testified that their neighbor and the homeowners association support the Application and the neighbor's home is 5 feet from the property line and the steps encroach into the setback area.
13. The Board found that Ms. Norman testified that other homes in the neighborhood are similar and other variances have been granted.
14. The Board found that Ms. Norman testified that the need for the variances was not created by the Applicants as they did not have control of the placement of the Delmarva Power transformer.
15. The Board found that Ms. Norman testified that the variances will not alter the essential character of the neighborhood as the home will be consistent with other homes in the area and some green space will be reserved.
16. The Board found that Ms. Norman testified that the variances requested are the minimum variances requested to afford relief.
17. The Board found that one person appeared in support of and no one appeared 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 as it is a small and narrow lot. The lot is only 50 feet wide and consists of only 4,284 square feet. The Property is also unique because it is susceptible to flooding so the house needs to be elevated. As such, the building envelope is exceptionally limited. The Property is also unique because the front northwest corner of the lot is improved by a transformer for Delmarva Power. As such, the parking area on the lot is greatly limited and off-street parking is needed due to the lack of street parking in the neighborhood. These unique physical conditions have created an exceptional practical difficulty for the Applicants who seek to construct certain structures related to the house on the Property.
 - b. Due to the uniqueness of the Property, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Applicants seek to construct certain structures related to the house 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 set of steps, landing, HVAC system, and propane tank to be placed 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 Applicants. The location of the landing and steps provides the Applicants with reasonable access to the home and the HVAC system and propane tank will enable the Applicants to cool and heat their home.
 - c. The exceptional practical difficulty was not created by the Applicants. There was no evidence that the Applicants created the unique size of the Property or that the Applicants created the flooding or parking problems or placed the transformer on the lot. These unique conditions have created an unusually limited building envelope. These conditions have created the exceptional practical difficulty for the Applicants who seeks to certain structures related to the house on the lot.
 - 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. The un rebutted evidence confirms that there are other

similar structures in the neighborhood and the structures will be similarly situated to previous structures on the lot. The neighbor and homeowners association have indicated their support of the Application and the variances will enable the Applicants to have additional off-street parking, which should help alleviate congestion in the neighborhood since street parking is unavailable. 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 regulation at issue. The Applicants have demonstrated that the variances sought will allow the Applicants to certain structures related to the house on the Property. These structures are small enough to be reasonably used and meet their purpose. The Board also notes that no variances are needed for the house and that the location of the house will provide parking spaces which are lost due to the location of the transformer.

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, Mr. John Williamson, 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 June 4, 2019.