

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: TROY HARDIN, JR. & MARSHIA K. HARDIN

(Case No. 12060)

A hearing was held after due notice on November 20, 2017. The Board members present were: Mr. Dale Callaway, Ms. Ellen Magee, Mr. Bruce Mears, Mr. John Mills, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for variances from the rear yard and side yard setback requirements.

Findings of Fact

The Board found that the Applicants are seeking a variance of 9.0 feet from the ten (10) feet side yard setback requirement on the north side for an HVAC unit, a variance of 5.0 feet from the ten (10) feet side yard setback requirement on the north side for a proposed garage, a variance of 3.0 feet from the twenty (20) feet rear yard setback from a proposed dwelling, and a variance of 6.0 feet from the twenty (20) feet rear yard setback requirement for a proposed open deck. This application pertains to certain real property located on the east side of Wilson Avenue, approximately 435 feet south of Lincoln Drive (911 Address: 38807 Wilson Avenue, Selbyville); said property being identified as Sussex County Tax Map Parcel Number 5-33-20.18-153.00.

1. The Board was given copies of the Application, a portion of the tax map of the area, an aerial photograph of the Property, and an undated site plan of the Property.
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 Troy Hardin was sworn in to testify about the Application and submitted pictures and letters of support for the Board to review.
4. The Board found that Mr. Hardin testified that the Applicants propose to construct a new home which will be two stories tall. The Property is presently improved by a double-wide manufactured home.
5. The Board found that Mr. Hardin testified that the community was previously a manufactured home community but has evolved to a community with larger, stick-built dwellings.
6. The Board found that Mr. Hardin testified that the Property measures 50 feet wide by 85.94 feet deep and borders a lagoon.
7. The Board found that Mr. Hardin testified that the proposed home will have a first floor master bedroom and a garage. The dwelling will measure 63.3 feet deep.
8. The Board found that Mr. Hardin testified that the lots are unique and the Property cannot be otherwise developed.
9. The Board found that Mr. Hardin testified that there are parking issues in the neighborhood.
10. The Board found that Mr. Hardin testified that parking is needed on the south side of the house and the house is designed to accommodate parking in the garage and along the south side of the house.
11. The Board found that Mr. Hardin testified that the variances will not alter the essential character of the neighborhood and his neighbors support the Application.
12. The Board found that Mr. Hardin testified that other homes nearby encroach into the setback areas.
13. The Board found that Mr. Hardin testified that he is requesting a variance of 9 feet from the ten (10) feet side yard setback on the north side to allow for an HVAC issue

because additional space will be needed for the system. The HVAC system cannot be located elsewhere on the Property.

14. The Board found that Mr. Hardin testified that he plans to elevate the house to alleviate flooding concerns.
15. The Board found that Mr. Hardin testified that the proposed home is similar in location to the existing home. The proposed home will be no closer to the north side property line or the front property line than the existing home.
16. The Board found that one (1) party appeared in support of the Application.
17. The Board found that no parties 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 due to its size. The Property is quite small and is located adjacent to a lagoon as evidenced by the survey. The Property consists of only 50 feet wide by 85.94 feet deep. 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 home and related 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 build a home and related structures 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 home and related structures to be constructed on the Property. The Board is convinced that the shape and location of the home and related 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 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. The Board also notes that parking is a problem in the community and the home was moved closer to the rear yard and the north side yard to provide better parking for the Property. The need for parking has also limited the building envelope for the Property. The Property is also subject to flooding so the home is raised to alleviate those concerns as well.
 - 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 home and related structures 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. This dwelling fits with the evolving nature of Cape Windsor. The alignment of the home and related structures is consistent with the placement of similar structures on other nearby properties as well as the

historical development of the Property. 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 home and related structures on the Property.
- f. The Board notes that the variance for the HVAC system on the north side is granted for 9 feet rather than 8 feet as originally requested by the Applicants. After review of the Application at the hearing, the Applicants determined that additional room will likely be needed for the HVAC system and the request for the variance for the HVAC was slightly expanded.

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 Members voted against the Motion to approve the variance 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 January 23, 2018.