

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

**IN RE: NVR, INC. (D/B/A RYAN HOMES)**

**(Case No. 11496)**

A hearing was held after due notice on December 15, 2014. The Board members present were: Mr. Dale Callaway, Mr. Jeff Hudson, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for a variance from the rear yard setback requirement.

Findings of Fact

The Board found that the Applicant was seeking a variance of 3.3 feet from the ten (10) feet rear yard setback requirement for an existing porch. This application pertains to certain real property located east of Angola Beach Road (Road 278) and being west of Herring Reach approximately 525 feet south of Inlet Breeze Drive and being Lot 109 within Bay Pointe Subdivision (911 Address: 23704 Herring Reach Court, Lewes, DE); said property being identified as Sussex County Tax Map Parcel Number 2-34-18.00-722.00. After a hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a portion of the tax map of the area, and a survey of the Property dated October 21, 2014.
2. The Board found that the Office of Planning and Zoning received no letters regarding the Application.
3. Jeremy Treadwell was sworn in to testify the Application and James Fuqua, Esquire, presented the Application on behalf of the Applicants. Mr. Fuqua submitted exhibits to the Board to review which included a picture of the porch.
4. The Board found that Mr. Fuqua stated that the Property is located in the Bay Pointe subdivision.
5. The Board found that Mr. Fuqua stated that the Applicant is selling the home.
6. The Board found that Mr. Fuqua stated that the Applicant builds homes in the development based off of several different models and that the Applicant obtains a survey of each lot before beginning construction.
7. The Board found that Mr. Fuqua stated that the surveyor staked out the location for the dwelling and that the Applicant constructed the dwelling based on the survey.
8. The Board found that Mr. Fuqua stated that the encroachment was discovered when an as-built survey was completed for settlement.
9. The Board found that Mr. Fuqua stated that the Applicant used reasonable and best practices in laying out the dwelling.
10. The Board found that Mr. Fuqua stated that the porch is enclosed and cannot encroach into the setback.
11. The Board found that Mr. Fuqua stated that the surveyor based the location of the proposed dwelling with an open unenclosed porch which could encroach into the setback.
12. The Board found that Mr. Fuqua stated that the enclosed porch was the plan from the start and that the surveyor made the mistake prior to construction.
13. The Board found that Mr. Fuqua stated that, unlike situations where a residential lot abuts another residential lot in the rear yard, the rear yard to this property borders a Storm Water Management and Wetlands area.
14. The Board found that Mr. Fuqua stated that the nearest dwelling from the rear property line is over 100 feet away.

15. The Board found that Mr. Fuqua stated that the good faith mistake created a unique situation.
16. The Board found that Mr. Fuqua stated that the variance is necessary to enable reasonable use of the Property.
17. The Board found that Mr. Fuqua stated that the porch is important to the purchasers of the Property and that removing a portion of the porch to comply with the setback requirements would provide little benefit while rendering the porch useless.
18. The Board found that Mr. Fuqua stated that the difficulty was not created by the Applicant.
19. The Board found that Mr. Fuqua stated that the variance will not alter the essential character of the neighborhood.
20. The Board found that Mr. Fuqua stated that the variance requested is the minimum variance to correct the mistake.
21. The Board found that Mr. Treadwell, under oath, confirmed the statements made by Mr. Fuqua.
22. The Board found that Gregory James of Ryan Homes was sworn in and testified that his company has built the majority of dwellings in the development and that this is the first variance request in the development.
23. The Board found that Mr. James testified that the Applicant has only one (1) lot left to sell in the development.
24. The Board found that no parties appeared in support of or in opposition to the Application.
25. 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 unrebutted, 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 in size and shape. The lot is rather small and is adjacent to a storm water management facility. The situation is also unique because the Applicant relied on a surveyor prior to constructing the dwelling and porch only to learn after construction that the surveyor made an error in the placement of the stakes.
  - b. The Property cannot be developed as planned in strict conformity with the Sussex County Zoning Code. The enclosed porch encroaches into the rear yard setback area and would need to be reduced in size in order to comply with the Code. The unrebutted testimony demonstrates that, if the porch was brought into compliance with the Code, the renovation would be costly and the size reduction would provide little to no benefit while rendering the porch useless. The enclosed porch in its current state is a reasonable size and constitutes a reasonable use of the Property. The variance requested is thus necessary to enable reasonable use of the Property.
  - c. The exceptional practical difficulty was not created by the Applicant. The Applicant relied on an incorrect survey and placement of stakes by its surveyor prior to the construction of the dwelling and porch. The unrebutted testimony indicates that the surveying mistake was only discovered after the home was constructed. The evidence clearly demonstrates that the Applicant built this home in good faith reliance on the survey and did not create the problem. Testimony from the Applicant's representative also indicates that this is the first variance requested by the Applicant in this development and that the Applicant has constructed other homes in compliance with the Sussex County Zoning Code in Bay Pointe.

- d. The variance 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 rear yard of the Property is adjacent to a storm water management area and the nearest residential property to the rear yard is over 100 feet away. The impact of the encroachment is minimal, if even noticeable. The porch is also consistent with the residential character of the neighborhood.
- e. The variance sought is the minimum variance necessary to afford relief and represents the least modification of the regulation at issue. The variance will allow the already built enclosed porch to remain in its current location without the need for the removal of a significant portion thereof. The Applicant has not proposed any further additions to this structure which would require a variance.

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, Mr. Jeff Hudson, Mr. John Mills, Mr. Norman Rickard, 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 February 18, 2015