

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: STACEY LYNN BURTON & JACOB ADAMS FOWLER

(Case No. 11561)

A hearing was held after due notice on May 4, 2015. 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 front yard setback requirement.

Findings of Fact

The Board found that the Applicants were seeking a variance of 19.7 feet from the forty (40) feet front yard setback requirement for a proposed deck and addition. This application pertains to certain real property located southwest of Road 241 (Burton Road), approximately 1.38 mile northwest of Road 319 (Sand Hill Road). (911 Address: None Available); said property being identified as Sussex County Tax Map Parcel Number 2-35-19.00-25.16.

1. The Board was given copies of the Application, a portion of the tax map of the area, a portion of an undated plot of the Property, a portion of an undated plot of the Property showing the proposed additions, a portion of the Sussex County Zoning Code, and a list of names of nearby property owners.
2. The Board found that the Office of Planning & Zoning did not receive any correspondence regarding the Application.
3. Stacey Lynn Burton and Jacob Adams Fowler were sworn in to testify about the Application. Jane Patchell, Esquire, presented the case on behalf of the Applicants.
4. The Board found that Ms. Patchell stated that the existing dwelling is in poor condition and is in need of repair. The Applicants plan to remodel the existing structure and construct an addition and deck to the rear of the existing dwelling.
5. The Board found that Ms. Patchell stated that the existing dwelling was constructed in approximately 1898 per the Assessment Records which was well before the enactment of the Sussex County Zoning Code. The configuration of the dwelling has not changed from the drawing of the dwelling shown on the assessment card.
6. The Board found that Ms. Patchell stated that the dwelling is located entirely in the front yard setback area. Accordingly, portions of the proposed deck and addition will be located in the front yard setback requirement.
7. The Board found that Ms. Patchell stated that the Applicants purchased the Property in January 2015.
8. The Board found that Ms. Patchell stated that the location of an existing well, concrete pump house, and septic field prevent the dwelling from being moved into compliance.
9. The Board found that Ms. Patchell stated that the Property is unique because the dwelling was placed on the Property prior to the enactment of the Sussex County Zoning Code.
10. The Board found that Ms. Patchell stated that the existing dwelling is located entirely within the front yard setback requirement and the location of the improvements which support the dwelling prevent the Property from being developed in strict conformity with the Sussex County Zoning Code. Any addition to the dwelling would have to at least partially be located in the front yard setback area.

11. The Board found that Ms. Patchell stated that the variance is necessary to enable reasonable use of the Property.
12. The Board found that Ms. Patchell stated that the exceptional practical difficulty was not created by the Applicants.
13. The Board found that Ms. Patchell stated that the variance will not alter the essential character of the neighborhood because the dwelling has been on the Property for over 100 years. The Applicants also intend to continue using the dwelling as a single family residence.
14. The Board found that Ms. Patchell stated that the proposed addition will enhance the neighborhood and that the use will not be detrimental to the public welfare.
15. The Board found that Ms. Patchell stated that the variance requested is the minimum variance to afford relief and that the variance represents the least modification of the regulation at issue.
16. The Board found that Ms. Burton, under oath, confirmed the statements made by Ms. Patchell.
17. The Board found that John Burton was sworn in and testified in support of the Application.
18. The Board found that one (1) party appeared in support of the Application.
19. The Board found that no parties appeared in opposition to the Application.
20. 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 the existence of a dwelling which was constructed in approximately 1898 and is located entirely within the front yard setback area. The unique placement of the dwelling is clear when reviewing the survey attached to the Application. The Property is also unique due to the location of the well, pump house, septic fields, and sheds which service the dwelling but limit the placement options for the dwelling. The uniqueness of the Property and its development have created an exceptional practical difficulty for the Applicants.
 - b. Due to the uniqueness of the Property, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The dwelling was placed on the Property more than 100 years ago, which was well before the enactment of the Sussex County Zoning Code. The dwelling, which was recently purchased by the Applicants, is in need of significant repair. The Applicants seek to remodel the dwelling and construct an addition and deck of reasonable size but are unable to do so without violating the Sussex County Zoning Code. In fact, no addition to the dwelling can be made without a variance because the dwelling is entirely located within the front yard setback area. The dwelling is quite small, as evidenced by the survey and the addition and deck are reasonable in size and location. The additions will be made to the rear of the dwelling so the structure will not encroach any farther into the front yard setback than it already does. The Board is convinced that the variance is necessary to enable the reasonable use of the Property as the variance will allow a reasonably sized addition and deck to be placed on the Property. The Board is convinced that the shape and location of the addition and deck are also reasonable; which is confirmed when reviewing the survey.
 - c. The exceptional practical difficulty was not created by the Applicants. The Applicants did not place the dwelling on the Property. Rather, the dwelling has been in its present location for many years and pre-dates the enactment of the Sussex County Zoning Code. The placement of the

dwelling entirely in the front yard setback area restricts the Applicants from constructing a reasonable addition to the dwelling as any addition, even if to the rear of the dwelling, would be located within the front yard setback area. The dwelling is in poor condition and in need of repair and the Applicants propose remodeling the dwelling and constructing a reasonable addition. It is clear to the Board that the Applicants did not create this exceptional practical difficulty and that the difficulty was created by the unusual location of the dwelling and the uniqueness of the lot.

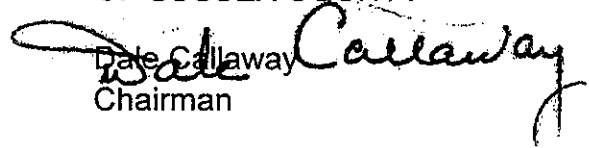
- d. The variance will not alter the essential character of the neighborhood nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare. The Board is convinced that the proposed addition and deck will not have a negative impact on the neighborhood. The unrebutted testimony indicates that the dwelling is in poor condition and the Applicants intend to remodel the dwelling, which should enhance the neighborhood. The dwelling has been in its present location since approximately 1898 and the addition and deck will be constructed to the rear of the dwelling and will not encroach farther into the front yard setback than the existing dwelling. Since the dwelling has been in its present location for so many years, it is likely that the dwelling is part of the character of the neighborhood and the granting of this variance request would in no way alter the character of the neighborhood, impair the uses of adjacent properties, or be detrimental to the public welfare. No evidence was presented which would indicate that the variance would somehow alter the essential character of the neighborhood or be detrimental to the public welfare.
- e. The variance sought is the minimum variance necessary to afford relief and the variance requested represents the least modification possible of the regulation at issue. The Applicants have demonstrated that the variance sought will allow the proposed addition and deck to be built in the proposed locations. Due to the placement of the dwelling entirely within the front yard setback area, no addition could be made thereto without a variance. The addition and deck will be constructed to the rear of the dwelling and will not encroach farther into the front yard setback area than the existing dwelling. The Applicants are not seeking to build an improvement in the front yard setback area which will extend farther than the existing dwelling.

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 June 9, 2015