

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: HARRY CUNNINGHAM

(Case No. 11578)

A hearing was held after due notice on May 18, 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 variances from the rear yard setback requirement.

Findings of Fact

The Board found that the Applicant was seeking a variance of three (3) feet from the five (5) feet rear yard setback requirement for a proposed open deck and a variance of 16.25 feet from the twenty (20) feet rear yard setback requirement for a proposed screened-in porch. This application pertains to certain real property located west of Wil-King Road (Road 288) and being northwest corner of South Acorn Way, approximately 150 feet south of White Tail Way and being more specifically Lot 110 Oakwood Village Subdivision (911 Address: 22410 Acorn Way, Lewes); said property being identified as Sussex County Tax Map Parcel Number 2-34-6.00-74.00.

1. The Board was given copies of the Application, a drawing of the Property, an undated house fit plan, a portion of the tax map of the area, a survey dated December 10, 2014, and a site and grading plan dated May 16, 2014.
2. The Board found that the Office of Planning & Zoning had not received any correspondence in support of or in opposition to the Application.
3. Harry Cunningham and Gail Cunningham were sworn in to testify about the Application.
4. The Board found that Mr. Cunningham testified that they purchased the Property December 2014 and moved in January 2015. They realized after moving in they wanted a screened-in porch.
5. The Board found that Mr. Cunningham testified that the dwelling was built to the rear of the Property and the rear yard property line is angled and adjacent to common area.
6. The Board found that Mr. Cunningham testified that the front property line is curved due to the street and the building envelope on the Property was very small.
7. The Board found that Mr. Cunningham testified that the Property is unique in shape and size.
8. The Board found that Mr. Cunningham testified that the existing propane tank and HVAC system prevent the screened-in porch and deck from being built elsewhere on the Property.
9. The Board found that Mr. Cunningham testified that the difficulty was not created by the Applicants.
10. The Board found that Mr. Cunningham testified that the variances will not alter the character of the neighborhood. 15-20% of homes in the neighborhood have decks and / or porches.
11. The Board found that Mr. Cunningham testified that the variances are the minimum variances necessary to afford relief.
12. The Board found that Mrs. Cunningham testified that when they purchased the Property there were no roads which would allow them to see where the house would be located on the lot.

13. The Board found that Mrs. Cunningham testified that the house is located to the rear of the Property and the Property abuts to common area in the rear.
14. The Board found that no parties appeared in support of or in opposition to the Application.
15. 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 has a unique shape which is apparent when reviewing the survey attached the Application. The Property is located adjacent to South Acorn Way which curves in such a fashion as to greatly limit the building envelope for the lot. The side property line is also angled which further limits the building envelope. The uniqueness of the Property has created an exceptional practical difficulty for the Applicants who seek to build a reasonably sized deck and porch 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 the requested variances in order to construct the deck and porch on the Property and no additional variances are requested. The Applicants testified as to the limited usable outdoor space in the yard due to the curvature of South Acorn Way and the location of utilities on the lot. The proposed deck and porch will provide the Applicants with usable space. 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 construct a reasonably sized deck and porch. The Board is convinced that the size, shape and location of the deck and porch are reasonable; which is confirmed when reviewing the survey.
 - c. The exceptional practical difficulty was not created by the Applicants. The Property's unique shape has created a unique building envelope. The Applicants did not create the unique shape of the Property. As such, it is clear to the Board that the exceptional practical difficulty was not created by 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 porch and deck will not have a negative impact on the neighborhood. Other homes in the neighborhood have similar decks and porches and no evidence was presented which would indicate 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 proposed porch and deck to be constructed as indicated on the survey and that no additional variances are being requested.


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 July 7, 2015.