

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: FRANCIS MELLON & THERESA MELLON

(Case No. 11580)

A hearing was held after due notice on June 8, 2015. The Board members present were: Mr. Dale Callaway, Mr. Jeff Hudson, Mr. John Mills, 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 Applicants were seeking a variance of 3.1 feet from the required ten (10) feet rear yard setback requirement for an existing sunroom. This application pertains to certain real property located on the north side of Vincent Village Drive, west of Beulah Boulevard and being Lot 3 within The Vincent Overlook Subdivision (911 Address: 29735 Vincent Village Drive, Milton); said property being identified as Sussex County Tax Map Parcel Number 2-35-27.00-160.00.

1. The Board was given copies of the Application, a portion of the tax map of the area, an undated survey of the Property, and a letter from Jim Henslee of the Vincent Overlook Architectural Review Committee.
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. Francis Mellon was sworn in to testify about the Application and Chad Meredith, Esquire, presented the Application to the Board. Mr. Meredith submitted exhibits to the Board, which included an aerial photograph of the Property, a survey dated March 3, 2010, and letters of support from neighbors.
4. The Board found that Mr. Meredith stated that the Applicants purchased the Property in 2010 and that in 2013 the Applicants hired a contractor (Natural Creativity, LLC) to construct a sunroom measuring 10 feet by 16 feet.
5. The Board found that Mr. Meredith stated that the proper permits were obtained and the Applicants obtained approval from the Homeowners Association.
6. The Board found that Mr. Meredith stated that the Applicants have decided to sell the Property and a survey completed in 2015 for settlement showed the encroachment.
7. The Board found that Mr. Meredith stated that the rear yard is adjacent to the open space.
8. The Board found that Mr. Meredith stated that that no neighbors have been adversely affected by the encroachment. The adjacent neighbors are in support of the Application.
9. The Board found that Mr. Meredith stated that the Property is unique since it is adjacent to open space and there are no neighbors to the rear of the Property.
10. The Board found that Mr. Meredith stated that the variance is necessary to enable reasonable use of the Property.
11. The Board found that Mr. Meredith stated that an exceptional practical difficulty exists and that the exceptional practical difficulty was not created by the Applicants. The Applicants relied on the builder to meet all zoning requirements.
12. The Board found that Mr. Meredith stated that the variance will not alter the essential character of the neighborhood. The sunroom is similar to sunrooms on neighboring properties.
13. The Board found that Mr. Meredith stated that there is no other possible way to develop the Property.

14. The Board found that Mr. Meredith stated that the use is not detrimental to the public welfare.
15. The Board found that Mr. Meredith stated that the variance requested is the least modification of the regulation at issue and that the variance requested is the minimum variance necessary to afford relief.
16. The Board found that Mr. Mellon, under oath, confirmed the statements made by Mr. Meredith and testified that they relied on the contractor to build the sunroom in compliance with the Sussex County Code.
17. The Board found that five (5) parties appeared in support of the Application.
18. The Board found that no parties appeared in opposition to the Application.
19. 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 angled uniquely on the east side and this unique angle has created an odd building envelope. The situation is also unique because the Applicants relied on a builder to construct the sunroom in compliance with the Sussex County Zoning Code. The uniqueness of the Property and the situation has created an exceptional practical difficulty for the Applicants who seek to retain the sunroom 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 variance in order to retain the existing sunroom on the Property and no additional variances are requested. The sunroom provides the Applicants with a reasonable addition and usable space and the sunroom is similar to others in the neighborhood. The Board is convinced that the variance is necessary to enable the reasonable use of the Property as the variance will allow the Applicants to retain a reasonably sized sunroom on the Property. The Board is convinced that the shape and location of the sunroom are also 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. The Applicants also retained a builder to construct the sunroom in compliance with the Sussex County Zoning Code and only to later learn that the sunroom encroached into the setback area. The Applicants did not construct the sunroom and relied on the builder to their detriment. As such, it is clear to the Board that the exceptional practical difficulty was not created by the Applicants.
 - 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 sunroom will not have a negative impact on the neighborhood. Other homes in the neighborhood have similar sunrooms and 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. Rather, neighbors have submitted letters of support to the Application. Furthermore, the sunroom encroaches into the rear yard setback area which abuts common area. The impact of the sunroom on neighboring properties is thus minimal, if any.

- 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 existing sunroom to remain on the Property as shown 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, 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 21, 2015