

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

**IN RE: NANCY CUSTER MCKENZIE**

**(Case No. 11625)**

A hearing was held after due notice on August 17, 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 side yard setback requirement.

Findings of Fact

The Board found that the Applicant is seeking a variance of 1.8 feet from the ten (10) feet side yard setback requirement for a proposed screen porch. This application pertains to certain real property located on the southeast side of Oyster Catcher Drive approximately 142 feet south of Dowitcher Lane (911 Address: 38805 Oyster Catcher Drive, Ocean View); said property being identified as Sussex County Tax Map Parcel Number 1-34-8.00-955.00.

1. The Board was given copies of the Application, a letter from the Applicant, a portion of the tax map of the area, and a survey of the Property dated September 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. The Board found that Nancy McKenzie and Jerry Schaeffer were sworn in to testify about the Application. Mr. Schaeffer submitted pictures to the Board to review.
4. The Board found that Mr. Schaeffer testified that he builds the majority of decks and porches in the development.
5. The Board found that Mr. Schaeffer testified that the rear of the Property is adjacent to an existing pond. The lots surrounding the pond are oddly shaped. In this case, the Property narrows to the rear.
6. The Board found that Mr. Schaeffer testified that the proposed screen porch will measure 16 feet by 18 feet.
7. The Board found that Mr. Schaeffer testified that during construction of the dwelling the location shifted and is not centered on the Property.
8. The Board found that Mr. Schaeffer testified that the Applicant told NV Homes she wanted to add a porch on the rear of the dwelling and NV Homes assured her there would be room for the porch.
9. The Board found that Mr. Schaeffer testified that during construction NV Homes admitted the dwelling was shifted on the lot thereby creating the need for the variance.
10. The Board found that Mr. Schaeffer testified that the proposed porch roof must match the roof line of the existing dwelling per the Homeowners Association regulations.
11. The Board found that Mr. Schaeffer testified that all the porches in the development are built on the same side of the dwelling and are similar in size to the proposed porch.
12. The Board found that Mr. Schaeffer testified that at the proposed porch cannot be built on the opposite side of the dwelling because there is no outside access and the Applicant's bedroom is located there.
13. The Board found that Mr. Schaeffer testified that the Applicant will also construct a deck off of the morning room and the deck will be accessible from the porch.

14. The Board found that Mr. Schaeffer testified that the proposed size of the porch will provide better ventilation as a smaller porch will not provide adequate ventilation.
15. The Board found that Mr. Schaeffer testified that the neighbors have no objection to the Application.
16. The Board found that Mr. Schaeffer testified that the location of the dwelling and narrowing of the lot create a uniqueness to the Property.
17. The Board found that Mr. Schaeffer testified that the variance will enable reasonable use of the Property.
18. The Board found that Mr. Schaeffer testified that the difficulty was not created by the Applicant.
19. The Board found that Mr. Schaeffer testified that the porch will not alter the character of the neighborhood.
20. The Board found that Mr. Schaeffer testified that the variance requested is the minimum variance to afford relief.
21. The Board found that Ms. McKenzie testified that she was told by NV Homes that she would be able to fit a porch of the proposed size on the lot with the dwelling and that her neighbors support the variance application.
22. The Board found that no parties appeared in support of or in opposition to the Application.
23. 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 due to its unique shape. The Property is quite narrow in the rear yard in comparison with the width of the lot in the front yard. The unique shape of the lot has created an unusual building envelope. The Property's unique characteristics have created an exceptional practical difficulty for the Applicant who seeks to construct a porch 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 shape and the buildable area thereof is limited due to its shape. The Applicant seeks to build a porch on the lot but is unable to do so without violating the Sussex County Zoning Code. The Board is convinced that the variance is necessary to enable the reasonable use of the Property as the variance will allow a reasonable porch to be constructed on the Property. The porch will conform with neighborhood regulations and will be consistent with other porches in the neighborhood. The Board is convinced that the size, shape, and location of this porch are reasonable, which is confirmed when reviewing the survey provided by the Applicant. The Board is also convinced that the Applicant has explored alternatives such as placing the porch on the opposite side of the morning room and reducing its size. The proposed size and location of the porch is appropriate as it will provide direct access to the home and not through the Applicant's bedroom and the porch will be consistent with the size of other porches in the neighborhood which are typically the same size or larger than the porch.
  - c. The exceptional practical difficulty was not created by the Applicant. The Applicant did not create the unusual shape of the Property. Additionally, the Applicant relied on its builder to construct the dwelling in such a manner as to allow for room to construct this porch in compliance with the Sussex County Zoning Code. The builder, however, shifted the location of

the dwelling. The shifting of the dwelling made it impossible for the Applicant to construct the proposed porch in compliance with the Sussex County Zoning Code. The shift in the placement of the dwelling was not something caused by the Applicant. If the Property was not so narrow in the rear yard, the shifting of the dwelling would not have created a problem for the Applicant. The Board is convinced that the exceptional practical difficulty was not created by the Applicant but was created by the shape of the lot and the placement of the dwelling by the Applicant's contractor.

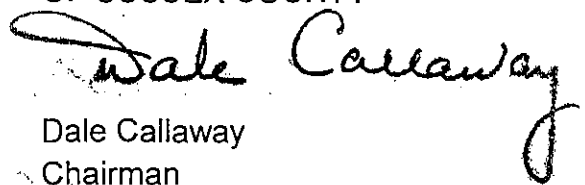
- d. The variance will not alter the essential character of the neighborhood nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare. The Board is convinced that the porch will have no effect on the character of the neighborhood. The un rebutted testimony confirms that there are other porches in the neighborhood of a similar size and shape and the proposed porch is consistent with the character of the community. 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 Applicant has demonstrated that the variance sought will allow the Applicant to construct the porch on the Property. The Board is convinced that the Applicant has taken appropriate measures to limit the size of the variance so as to minimize the encroachment while allowing for a reasonably sized porch to be located thereon.

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 October 6, 2015