

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: SCOTT C. SHIPMAN & SPENCER C. SHIPMAN

(Case No. 11639)

A hearing was held after due notice on September 21, 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 front yard setback requirement.

Findings of Fact

The Board found that the Applicants are seeking a variance of ten (10) feet from the thirty (30) feet front yard setback requirement for a dwelling and an enclosed porch. This application pertains to certain real property located on the north side of South Carolina Avenue approximately 142 feet west of North Bayshore Drive (911 Address: 108 South Carolina Avenue, Milton); said property being identified as Sussex County Tax Map Parcel Number 2-35-3.16-85.00.

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 June 1, 2015.
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. Scott Shipman was sworn in to testify about the Application and Chad Meredith, Esquire, presented the Application on behalf of the Applicants. Mr. Meredith submitted exhibits to the Board to review including the plans for the proposed project.
4. The Board found that Mr. Meredith stated that the Property is located in Broadkill Beach.
5. The Board found that Mr. Meredith stated that the Applicants recently purchased the Property and a survey completed in June 2015 showed the encroachment.
6. The Board found that Mr. Meredith stated that an enclosed porch is located in the front yard setback area. The existing dwelling was built in the 1950s and a building permit was issued in 2004 to enclose the existing porch.
7. The Board found that Mr. Meredith stated that aerial photos show that numerous lots are developed with similarly situated structures.
8. The Board found that Mr. Meredith stated that the Property is located in a flood zone with a flood elevation of nine (9) feet and the Applicants would like to raise the existing structure above the base flood elevation. The footprint of the dwelling will remain the same when raised and the enclosed porch will be the full width of the dwelling when completed.
9. The Board found that Mr. Meredith stated that the Property is unique since it is located in a flood plain requiring that the dwelling be raised. The uniqueness of the Property has created an exceptional practical difficulty for the Applicants.
10. The Board found that Mr. Meredith stated that the existing encroachment has gone undetected since 2004.
11. The Board found that Mr. Meredith stated that the variance is necessary to enable reasonable use of the Property.
12. The Board found that Mr. Meredith stated that the neighboring properties have been developed and, thus, the use does not impair the uses of the neighboring or adjacent properties.

13. The Board found that Mr. Meredith stated that the exceptional practical difficulty was not created by the Applicants. The dwelling and porch were constructed by a prior owner.
14. The Board found that Mr. Meredith stated that the variance will not alter the essential character of the neighborhood and the use is not detrimental to the public welfare.
15. The Board found that Mr. Meredith stated that the variance requested is the minimum variance necessary to afford relief.
16. The Board found that Mr. Shipman, under oath, affirmed the statements made by Mr. Meredith.
17. The Board found that Mr. Shipman testified that the proposed stairs will comply with the required setbacks.
18. The Board found that Mr. Shipman testified that the proposed septic system will be in the rear yard of the Property and that the location of the septic system prevents moving the existing structure into compliance.
19. The Board found that no parties appeared in support of or 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 to its flood elevation of nine (9) feet. The Property is located in Broadkill Beach and the Applicants seek to raise the existing dwelling and enclosed porch above the base flood elevation. The situation is also unique because a prior owner constructed a dwelling and enclosed porch which do not comply with the front yard setback requirement. The encroachment was not initially discovered and a building permit was issued at the time the porch was enclosed. This unusual situation has created an exceptional practical difficulty for the Applicants who seek to raise a reasonably sized dwelling and enclosed porch on the lot.
 - b. Due to the uniqueness of the situation, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The dwelling was constructed in the 1950s and the porch was enclosed in 2004 by a prior owner. Recently, however, the Applicants discovered that the dwelling and enclosed porch encroach into the setback area. The Applicants seek to raise the structures above the base flood elevation and need a variance in order to do so. The Applicants cannot move the structures into compliance due to the location of the existing septic system. Rather, the Applicants seek to raise the dwelling and enclosed porch on the same footprint but are unable to do so in strict conformity with 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 reasonably sized dwelling and enclosed porch to remain on the Property and to be raised above the base flood elevation. The Board is convinced that the size, shape, and location of the dwelling and porch are reasonable, which is confirmed when reviewing the survey and plans provided by the Applicants.
 - c. The exceptional practical difficulty was not created by the Applicants. The dwelling and enclosed porch were constructed by a prior owner(s). The Applicants only recently purchased the Property and had no involvement in the construction of the dwelling or the enclosed porch. The encroachments were only recently discovered after the structures had

been on the Property for many years. The Applicants now seek to raise the structures above the base flood elevation but cannot do so without violating the Sussex County Zoning Code. The structures cannot be moved into compliance due to the location of the septic system. The Board is convinced that the exceptional practical difficulty was not created by the Applicants but by a prior owner when the dwelling and enclosed porch were constructed and by the need to raise the structures above the base flood elevation.

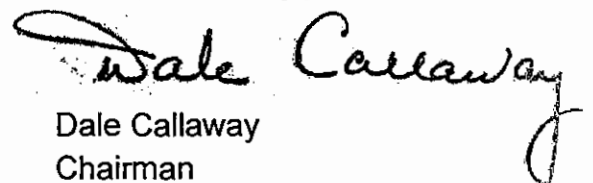
- d. The variance will not alter the essential character of the neighborhood nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare. The Board is convinced that the dwelling and enclosed porch will have no effect on the character of the neighborhood. The Property is located in a residential area and the use is a residential use. The dwelling has been in its present location since the 1950s and the porch has been enclosed since 2004. No complaints have been submitted into the record regarding the encroachments. Furthermore, no evidence was presented which indicated that the variance would somehow alter the essential character of the neighborhood or be detrimental to the public welfare. The lack of such evidence is telling since the dwelling and porch have been in their present location for many years.
- 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 Applicants to retain and raise the dwelling and porch on the Property.

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 Member voted against the Motion to Approve the Application. Mr. Norman Rickard was not present and did not participate in the discussion or vote of this 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 November 17, 2015