

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: RICHARD BLITZ, JR.

(Case No. 11723)

A hearing was held after due notice on February 29, 2016. The Board members present were: Mr. Dale Callaway, Mr. John Mills, Mr. Jeff Hudson, Mr. Norman Rickard, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for variances from the front yard setback requirements.

Findings of Fact

The Board found that the Applicant is seeking a variance of 8.4 feet from the forty (40) feet front yard setback requirement for an existing covered porch and steps and a variance of 14.4 feet from the forty (40) feet front yard setback requirement for an existing garage. This application pertains to certain real property located on the south side of Hickory Manor Road approximately 688 feet west of Vines Creek Road (911 Address: 31685 Hickory Manor Road, Frankford); said property being identified as Sussex County Tax Map Parcel Number 1-34-11.00-21.00 Inclusive.

1. The Board was given copies of the Application, a Certificate of Compliance dated January 11, 1995, a portion of the tax map of the area, and a survey of the Property dated June 22, 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. The Board found that Richard Blitz, Jr. was sworn in to testify about the Application.
4. The Board found that Mr. Blitz testified that he purchased the Property and had the dwelling built in 1994. The builder is now out of business.
5. The Board found that Mr. Blitz testified that his wife passed away in 2013 and he now wants to sell the dwelling. A survey completed for settlement showed the encroachments and he was unaware of any encroachments prior to the survey.
6. The Board found that Mr. Blitz testified that all permits and Certificate of Compliances were issued for the structures on the Property.
7. The Board found that Mr. Blitz testified that the covered porch and the garage on the west side of the dwelling were placed on the Property at the time the house was built.
8. The Board found that Mr. Blitz testified that shed on the east side of the Property was placed on the Property later and has been moved into compliance.
9. The Board found that Mr. Blitz testified that the variances requested are the minimum variances necessary to afford relief.
10. The Board found that Mr. Blitz testified that the difficulty was not created by the Applicant.
11. The Board found that Mr. Blitz testified that the existing driveway extends into the road and the edge of the tar and chipped road varies each time it is redone.
12. The Board found that no parties appeared in support of or in opposition to the Application.
13. 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 has a wide front yard but the side property lines are angled in an unusual fashion. The eastern side property line is 170.68 feet long but the western side property line is only 56.62 feet long. This unusual shape has created a very unique and oddly shaped building envelope. The unique characteristics of this Property limit the buildable area available to the Applicant and have created an exceptional practical difficulty for the Applicant who seeks to retain an existing covered porch with steps and a garage on the lot. The situation is also unique because the Applicant reasonably believed that the structures complied with the Sussex County Zoning Code after a certificate of compliance was issued.
- 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 retain an existing covered porch with steps and a garage of a reasonable size but is unable to do so without violating the Sussex County Zoning Code. The Board is convinced that the variances are necessary to enable the reasonable use of the Property as the variances will allow a reasonably sized existing covered porch with steps and a garage to remain on the Property. The Board is convinced that the shape and location of these structures are also reasonable, which is confirmed when reviewing the survey and pictures provided by the Applicant.
- c. The exceptional practical difficulty was not created by the Applicant. The Applicant did not create the unusual shape of the Property. The unique lot shape has resulted in a limited building envelope on the Property and the small building envelope has created the exceptional practical difficulty. Furthermore, the covered porch, steps, and garage were placed on the Property many years ago and have been in their present location since at least 1996. The Applicant obtained a Certificate of Compliance at the time the structures were placed on the Property and reasonably believed that the structures complied with the Sussex County Zoning Code. The unique characteristics of the Property are clear when reviewing the survey. The Board is convinced that the exceptional practical difficulty was not created by the Applicant but was created the lot's unique characteristics.
- 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 existing covered porch with steps and a garage will have no effect on the character of the neighborhood. The structures have been on the Property for approximately twenty (20) years. Despite the longstanding locations of these structures, no complaints were noted in the record about the locations of the structures. Furthermore, 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 regulations at issue. The Applicant has demonstrated that the variances sought will allow the Applicant to retain an existing covered porch with steps and a garage on the Property. The Applicant does not intend to make any additions to the structures and only seek the variances to allow the existing structures to remain in their current locations.

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 of the motion were Mr. Dale Callaway, Mr. Jeff Hudson, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman. No Board Member 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 April 5, 2016.