

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: ALAN DOBSON & NANCY DOBSON

(Case No. 11741)

A hearing was held after due notice on March 21, 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 a variance from the rear 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 rear yard setback requirement for a proposed three season room. This application pertains to certain real property located on the southwest side of Seagrass Plantation Lane across from Habersham Lane (911 Address: 35105 Seagrass Plantation Lane, Dagsboro); said property being identified as Sussex County Tax Map Parcel Number 1-34-7.00-667.00.

1. The Board was given copies of the Application, drawings of the proposed three season room, a letter from neighbors, a portion of the tax map, an aerial photograph of the Property, and an undated survey of the Property.
2. The Board found that the Office of Planning & Zoning received one (1) letter of support of the Application and no correspondence in opposition to the Application.
3. The Board found that Pamela McDonald was sworn in to testify about the Application.
4. The Board found that Ms. McDonald testified that Del-Coast Design and Build was hired by the Applicants to build a three season room measuring approximately 18 feet by 16 feet.
5. The Board found that Ms. McDonald testified that the Property is unique due to its narrow width. The size of the lot and dwelling leave no room for the proposed addition.
6. The Board found that Ms. McDonald testified that Ryan Homes developed this lot and led the Applicants to believe an addition could be built at a later date. She believes that the Applicants were misled by Ryan Homes.
7. The Board found that Ms. McDonald testified that the Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code.
8. The Board found that Ms. McDonald testified that the variance is the minimum variance to afford relief.
9. The Board found that Ms. McDonald testified that the need for the variance was not created by the Applicants.
10. The Board found that Ms. McDonald testified that the variance will not alter the essential character of the neighborhood. The proposed addition is similar to others in the neighborhood and there is an undeveloped wooded lot to the rear which also consists of wetlands areas.
11. The Board found that Ms. McDonald testified that she has constructed approximately fifty (50) three season rooms in the development and this is the first variance needed.
12. The Board found that Ms. McDonald testified that the use is not detrimental to the public welfare.
13. The Board found that Ms. McDonald testified that the thirty (30) feet rear yard setback for this lot add to the uniqueness of the Property.

14. The Board found that Ms. McDonald testified that existing dwelling is on a slab, therefore the proposed addition will also be on a concrete slab.
15. The Board found that Planning & Zoning Manager Janelle Cornwell stated that different lots in the community have different setbacks and that other lots in the community have smaller rear yard setbacks.
16. The Board found that Howard Simons was sworn in and testified with concerns about the Application. He represents the homeowners association and testified that the Applicant has not submitted any proposed plans to the association. He is neither supports or opposes the Application.
17. The Board found that Ms. McDonald testified that she is aware the Applicant must have Homeowners Association approval prior to construction and plans to meet with them if the Board approves the requested variance.
18. The Board found that no parties appeared in support of or 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 is unique as it has a rear yard setback which is larger than the rear yard setbacks for other properties in the neighborhood. The additional rear yard setback greatly reduces the building envelope on the Property and has created an exceptional practical difficulty for the Applicants who seek to build a three season room on the lot. The situation is also unique because the Applicants were misled by their builder and reasonably believed that a three season room could be constructed on the lot without a variance.
 - 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 rear yard setback which limits the building envelope. The Applicants seek to construct a three season room of a reasonable size but are 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 reasonably sized three season room to be constructed on the Property. The Board is convinced that the shape and location of this addition are reasonable, which is confirmed when reviewing the survey provided by the Applicants.
 - c. The exceptional practical difficulty was not created by the Applicants. The Applicants did not create the unique rear yard setback of the lot which has resulted in a limited building envelope on the Property. The Applicants also did not place the dwelling on the Property. Rather, the dwelling was placed on the Property by Ryan Homes and the Applicants were mistakenly led to believe by the builder that a three season room could be constructed on the Property without the need for a variance only to later find out that a variance would be necessary. The Board is convinced that the exceptional practical difficulty was not created by the Applicants but was created by the lot's unique characteristics and by the placement of the dwelling thereon by the builder – who misled 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 three season room will have no effect on the character of the neighborhood. The un rebutted testimony reflects that the room will be similar to others in the neighborhood and that neighbors support the

Application. No complaints were noted in the record about the proposed location of the room 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.

- 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 construct a reasonably sized three season room 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. Mr. Norman Rickard 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 May 17, 2016.