

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: DALE LARRIMORE AND PATRICIA LARRIMORE

(Case No. 11751)

A hearing was held after due notice on April 18, 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 4.2 feet from the ten (10) feet rear yard setback requirement on the north side for a proposed screened-in porch addition. This application pertains to certain real property located on the northwest corner of Signature Boulevard and Wild Rose Circle in Americana Bayside (911 Address: 36450 Wild Rose Circle, Selbyville); said property being identified as Sussex County Tax Map Parcel Number 5-33-19.00-1038.00.

1. The Board was given copies of the Application, a portion of the tax map of the area, a survey of the Property dated December 18, 2015, and drawings of the proposed addition.
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 Dale Larrimore and Patricia Larrimore were sworn in to testify about the Application. James Fuqua, Esquire, presented the case to the Board on behalf of the Applicants and submitted exhibits for the Board to review including a current survey of the Property, a survey showing the proposed addition, photographs of the house location and the rear of the dwelling, a letter of no objection from the Architectural Review Committee, letters of support from neighbors, and a letter from architect Robert Douglass.
4. The Board found that Mr. Fuqua stated that the Property is located in the Americana Bayside development.
5. The Board found that Mr. Fuqua stated that the Applicants own a dwelling on the Property which includes a small screened porch. The Applicants propose extending the screened porch. The proposed addition to the screened-in porch and deck are in line with the existing deck. The existing porch is 12 feet wide by 16 feet deep and, after the additions are constructed, the porch will measure approximately 14 feet wide by 21 feet deep.
6. The Board found that Mr. Fuqua stated that the deck is 5.8 feet from the rear yard setback line. The rear yard borders a strip of common area that is fifteen (15) feet wide and serves as a buffer from the storm water management pond. The existing dwelling and screen porch are twenty-six (26) feet from the storm water management pond and the proposed porch will be approximately twenty-one (21) feet from the storm water management pond. There is no dwelling or residential lot adjacent to the rear yard of the Property.
7. The Board found that Mr. Fuqua stated that open, unenclosed decks are permitted to extend five (5) feet into the setback area.
8. The Board found that Mr. Fuqua stated that the proposed addition will allow reasonable use of the Property. The Applicants need minimum exposure to the sun due to health issues and, as such, the open deck is rarely used due to those health issues.

9. The Board found that Mr. Fuqua stated that the homeowners association supports the Application and approved the porch extension. The neighbors also have no objection to the Application.
10. The Board found that Mr. Fuqua stated that the design of the porch addition will match the existing dwelling.
11. The Board found that Mr. Fuqua stated that the Property is unique because it is adjacent to a strip of common area which makes the rear yard of the Property appear larger than it actually is.
12. The Board found that Mr. Fuqua stated that the exceptional practical difficulty was not created by the Applicants.
13. The Board found that Mr. Fuqua stated that the variance and the addition will not alter the essential character of the neighborhood.
14. The Board found that Mr. Fuqua stated that the use will not be detrimental to the public welfare.
15. The Board found that Mr. Fuqua stated that the variance sought is the minimum variance necessary to afford relief.
16. The Board found that Mr. Larrimore affirmed the statements made by Mr. Fuqua.
17. The Board found that Mr. Larrimore testified that their health conditions were diagnosed after the Applicants purchased the Property.
18. The Board found that Mr. Larrimore testified that a small addition to the deck was needed for architectural purposes and will be consistent with the character of the neighborhood. He consulted with an architect in designing the porch and that there was no other possible location for the proposed addition.
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 as it is a corner lot that abuts to common area which houses a storm water management pond. The strip of land between the pond and the dwelling gives the illusion that the rear yard of the Property is larger than it actually is. The situation is also unique because the Applicants were diagnosed with medical conditions which necessitate limited exposure to the sun. These conditions limit their use of the existing open and unenclosed deck. The unique characteristics of the lot and the Applicants' medical conditions have created an exceptional practical difficulty for the Applicants who seek to construct a reasonably sized addition to the existing porch on the Property.
 - 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 building envelope since it is a corner lot. The Applicants seek to construct an addition to the porch of a reasonable size but are unable to do so without violating the Sussex County Zoning Code. The recent medical diagnoses which limit the Applicants' use of the existing deck has necessitated that the existing porch, which is quite small, be expanded to enable them with reasonable use of the Property; particularly outdoor use of the Property. The variance is thus necessary to enable reasonable use of the Property as the variance will allow a reasonably sized addition to the porch 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.

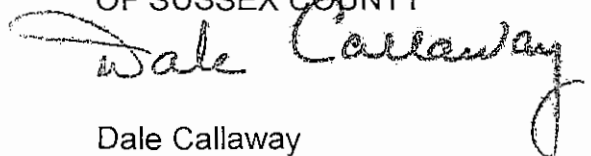
- c. The exceptional practical difficulty was not created by the Applicants. The Applicants did not create the unique size and shape of the lot which has resulted in a limited building envelope on the Property. The unique characteristics of the Property are clear from the record and the survey. The difficulty was exacerbated by the recent medical diagnoses of the Applicants which limit the usage of the existing deck. 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 their recent medical diagnoses.
- 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 addition to the porch will have no effect on the character of the neighborhood. The porch will be located in the rear of the Property adjacent to common area and a storm water management pond. There will be no dwelling constructed on the adjacent rear lot. The Board notes that the homeowners association and many neighbors submitted support of the Application. 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. The addition will also be constructed in such a manner so as to be consistent with other homes in the neighborhood; as noted in the letter submitted by the Applicants' architect.
- 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 addition to the porch on the Property which can be reasonably used by the Applicants.
- f. The Board also finds that the Applicants suffer from medical conditions and that the variance approval represents a reasonable accommodation.

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 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 June 21, 2016