

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: ALESSANDRO MARCOZZI AND MARIA MARCOZZI

(Case No. 11755)

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 separation requirement between townhomes.

Findings of Fact

The Board found that the Applicants are seeking a variance six (6) feet from the forty (40) feet separation requirement between townhomes for a proposed screened-in porch. This application pertains to certain real property located at the northeast side of Putter Lane in the Forest Landing Development (911 Address: 36519 Putter Lane, Frankford); said property being identified as Sussex County Tax Map Parcel Number 1-34-16.00-40.00.

1. The Board was given copies of the Application, a survey of the Property dated January 20, 2016, a site and grading plan dated August 28, 2013, a letter of no objection from Steve Gane and Susan Gane, drawings of the proposed porch, and pictures of the Property and surrounding area.
2. The Board found that the Office of Planning & Zoning received two (2) letters of support and no letters in opposition to the Application.
3. The Board found that Maria Marcozzi was sworn in to testify about the Application.
4. The Board found that Ms. Marcozzi testified that the Property is angled in a way that prevents the porch from meeting the separation requirement.
5. The Board found that Ms. Marcozzi testified that, when she agreed to purchase the Property, Ryan Homes told her she could build a screened-in porch. Ryan Homes is reimbursing her the application fee for their mistake.
6. The Board found that Ms. Marcozzi testified that the screened-in porch is necessary to enjoy the outdoors. The storm water management pond is at the rear of her property and there are mosquitoes due to the pond.
7. The Board found that Ms. Marcozzi testified that she was unaware any addition would not meet the separation requirement.
8. The Board found that Ms. Marcozzi testified that there are numerous screen porches in the development and that the porch will enhance the community. The porch will be the same as her neighbor's porch.
9. The Board found that Ms. Marcozzi testified that the proposed porch will measure 10.3 feet by 14.3 feet and a smaller porch would not be worth the expense.
10. The Board found that Ms. Marcozzi testified that the neighbors are in support of the Application and the Homeowners Association approved the screened-in porch addition.
11. The Board found that Ms. Marcozzi testified that the angle of the house is unique.
12. The Board found that Ms. Marcozzi testified that the screened-in porch will be within the common elements portion of her property.
13. The Board found that one (1) party appeared in support of the Application.
14. The Board found that no parties appeared in opposition to the Application.
15. 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 situation is unique because the curvature of Putter Lane creates an unusual separation distance between the Applicants' unit (Unit 300) and its neighboring unit (Unit 299). Normally, units in different townhouse boxes which are located to the side of each other must have a separation distance of 10 feet. Units which are adjacent to the rear, however, must have a separation distance of 40 feet. Both Unit 299 and 300 are located along Putter Lane but Putter Lane turns sharply between those units. In effect, Unit 299 and Unit 300 are next-door neighbors but the side of Unit 299 is to the rear of Unit 300. This is clearly an unusual situation caused by the odd angle of Putter Lane. The Board notes that the unit on the other end of the Applicant's townhouse box (Unit 302) is much closer to the unit on the next townhouse box (Unit 303) and Unit 302 has a porch. It is clear to the Board that the exceptional practical difficulty was not created by the Applicants but, rather, was created by the unique physical circumstances of the Property and Putter Lane. This difficulty was exacerbated when the developer incorrectly informed the Applicants that a screened-in porch could be constructed without a variance.
- b. Due to the uniqueness of the Property, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Applicants propose to construct a reasonably sized screened-in porch consistent with other porches in the neighborhood but are unable to do so without violating the separation distance requirements between units. The Board also notes that a storm water management pond is located nearby and results in mosquitoes in the rear yard. The presence of these mosquitoes limit the ability of the Applicants to use the rear yard and the screened-in porch will allow them to use their rear yard. The variance is thus necessary to enable reasonable use of the Property. The Board is convinced that the shape and location of the porch are also reasonable (which is confirmed when reviewing the survey).
- c. The exceptional practical difficulty was not created by the Applicants. The Applicants did not place the townhouse on the Property and were led to believe that they could place a porch on the Property. The Applicants also did not place the townhouse on the adjacent lot in such a manner that the separation distance requirement could be violated by the construction of a reasonably sized porch. The unique conditions of the Property and the development of the adjacent lot have created an exceptional practical difficulty for the Applicants who seek to place a reasonably sized porch on the Property.
- 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 not have a negative impact on the neighborhood. The porch will be similar to other porches in the neighborhood. 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. Rather, letters were received in support of the Application and the homeowners association supports the Application as well.
- 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

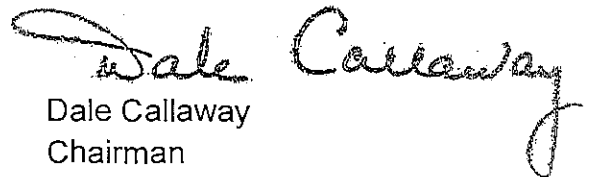
variance sought will allow the Applicants to construct a reasonably sized porch on the Property.

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, 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 June 21, 2016