

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: WJ HUDSON ENTERPRISES, LLC

(Case No. 11759)

A hearing was held after notice on May 2, 2016. The Board members present were: Mr. Dale Callaway, Mr. John Mills, Mr. Jeff Hudson and Mr. Brent Workman. Mr. Norman Rickard was absent.

Nature of the Proceedings

This was an application for variances from the side and rear yard setback requirements contained in Sections 115-42B and 115-182B of the Sussex County Zoning Ordinance.

Findings of Fact

The Board found that the applicant is seeking variances from the 15' side yard setback requirement and from the 10' rear yard setback requirement on a parcel of land zoned GR General Residential and is identified on the Sussex County Tax Map as Parcel Number 2-35-10.06-37.00.

After the hearing, the Board made the following findings of fact:

1. The Board was given copies of the application and the portion of the tax map depicting the property.
2. Janelle Cornwell, Planning and Zoning Manager, presented the case and stated that the Office of Planning and Zoning had not received any correspondence in support of or in opposition to the application.
3. Wade J. Hudson was sworn in and testified in response to questions from his attorney, Shannon Carmean Burton, Esquire, regarding the request for a variance of 4.3' from the 15' side yard setback requirement for an existing deck and proposed sunroom and a variance of 4.1' from the 10' rear yard setback requirement for the existing deck and proposed sunroom and a variance of 3.4' from the 15' side yard setback requirement for an existing dwelling.
4. The Board found that Wade Hudson testified that the existing dwelling and deck were built in 1984; that the applicant proposes to enclose a portion of the existing deck with an enclosed sunroom; and that the lot is irregular in shape and the property lines are angled with the existing dwelling being built parallel to the front property line.
5. The Board found that Wade Hudson testified that Certificates of Compliance had been issued for all the existing structures and that the property is considered to be a corner lot.
6. The Board found that Wade Hudson testified that the property cannot be developed in strict conformity with the zoning ordinance without the grant of the variances, which are necessary to enable the reasonable use of the property.
7. The Board found that Wade Hudson testified that the exceptional practical difficulty was not created by the applicant in that the proposed addition of the sunroom will not further encroach into the required setback and the setback issues with the dwelling and deck were created when those structures were built prior to his purchase.
8. The Board found that Wade Hudson testified that the granting of the requested variances will not alter the character of the neighborhood or be detrimental to the public welfare.

9. The Board found that Wade Hudson testified that the proposed use would not impair the uses of adjacent properties and the neighbors have expressed no objections to the application to him.
10. The Board found that Wade Hudson testified that the variances are the minimum variances needed to afford the requested relief and bring the property into conformity.
11. The Board found that Wade Hudson testified that he is the owner of the property through the limited liability company and that the proposed sunroom is for personal use and will measure approximately 13.9'x 28'.
12. The Board found that Wade Hudson testified that he was not aware that the existing deck encroached into the side and rear yard setbacks when he purchased the property in 2008.
13. The Board found that Wade Hudson testified that the proposed sunroom will not block any neighbor's view of the water and that the side lot lines are angled to prevent blocked views of the water by neighboring owners.
14. The Board found that no parties appeared in support of or in opposition to the application.
15. Based on the foregoing findings and the testimony and evidence presented during the hearing and contained in the public record, which the Board found to be credible, persuasive and unrebutted, the Board determined that the application met the standards for granting the requested variances. The findings below further support the Board's decision to approve the application for the following reasons:
 - a. The applicant's lot is irregular in shape and that the side lot lines are both on a angle; that it is a corner lot with the side lot lines conforming to the angle of road adjoining the northerly side lot line, whereas, the front of the house is situated more or less conforms to the angle of the right of way of South Bayshore Drive, along which it fronts, creating a unique situation. Further, the existing deck was constructed by a prior owner and the applicants were not aware that it encroached into the side and rear yard setbacks when they purchased the property. The property has been developed since 1984 and received Certificates of Compliances for the existing structures creating a unique situation;
 - b. The variances are necessary to enable reasonable use of the property, due to the unique shape of the lot in relationship to the location of the home on the lot and the existence of encroachments into the setbacks when the existing deck was constructed by the prior owner. As a result, the property cannot be developed in strict conformity with the Sussex County Zoning Code, thus the variances are necessary to enable the reasonable use of the property, cure pre-existing setback violations and allow a portion of the existing deck to be enclosed within the present envelope of the deck;
 - c. The exceptional practical difficulty was not created by the applicant. The applicants did not create the unique size and shape of the lot, which is a corner lot and with the layout of the lot being dictated by the angle of the road adjoining the front and northerly side of the lot. The Board is convinced that the shape and location of the proposed enclosure within the limits of the existing deck are reasonable, which is confirmed upon reviewing the survey provided by the applicant;
 - d. The variances will not alter the essential character of the neighborhood nor substantially or permanently impair the appropriate use or development of the adjacent property, nor be detrimental to the public welfare. The Board is convinced that the enclosure of an existing porch and the granting of variances to

procure pre-existing violations will have no detrimental effect on the character of the neighborhood. The addition will also be constructed in such a manner as to be consistent with other homes in the neighborhood; and

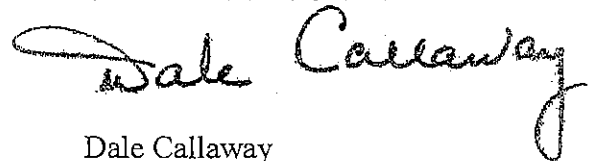
- e. The variances sought are the minimum variances necessary to afford relief and the variances represent the least modification possible of the regulations at issue. The applicants have demonstrated that the variances sought will allow them to construct a reasonably sized enclosure on the existing deck to provide more year-round use of the property by the applicant.

Based on the foregoing, the Board granted the requested variances from the side and rear yard setback requirements pursuant to Sections 115-42B and 115-182B of the Sussex County Zoning Code.

Decision of the Board

Upon motion duly made and seconded, the variances from the side and rear yard setback requirements was approved. The Board members voting in favor of the granting of the application were Mr. Workman, Mr. Hudson, Mr. Mills and Mr. Callaway.

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