

**BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY**

**IN RE: DAVID O'DONNELL & MELANIE O'DONNELL**

**(Case No. 11775)**

A hearing was held after due notice on May 16, 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 and rear yard setback requirements.

Findings of Fact

The Board found that the Applicants are seeking a variance of 0.8 feet from the five (5) feet rear yard setback requirement for an existing shed, a variance of 0.7 feet from the five (5) feet rear yard setback requirement for an existing shed, a variance of twelve (12) feet from the fifteen (15) feet corner side yard setback requirement for an existing outside shower, a variance of 5.4 feet from the fifteen (15) feet corner side yard setback requirement for an existing dwelling, and a variance of four (4) feet from the thirty (30) feet front yard setback requirement for a proposed porch. This application pertains to certain real property located on the northwest corner of South Bayshore Drive and Jackson Avenue (911 Address: 507 South Bayshore Drive, Milton) said property being identified as Sussex County Tax Map Parcel Number 2-35-4.17-71.00.

1. The Board was given copies of the Application, a portion of the tax map of the area, an aerial photograph of the area, a picture of the Property, a rendering of the proposed addition, and survey of the Property dated December 29, 2015.
2. The Board found that the Office of Planning & Zoning received no correspondence in support of or in opposition to the Application.
3. The Board found that David O'Donnell and Robert Jones were sworn in to testify about the Application.
4. The Board found that Mr. O'Donnell testified that he purchased the Property in January 2016.
5. The Board found that Mr. O'Donnell testified that winter storm "Jonas" ripped shingles from the roof and needed to be replaced. The septic system also needed to be replaced and a survey was completed to design the new septic system.
6. The Board found that Mr. O'Donnell testified that the lot is very small as it measures 50 feet by 100 feet and the existing dwelling is only 625 square feet in size. The existing dwelling was built in the 1950s.
7. The Board found that Mr. O'Donnell testified that the Property had been vacant for a number of years. The previous owner purchased the Property in 2010 and advised him that all improvements on the Property met code requirements.
8. The Board found that Mr. O'Donnell testified that he has not made any structural changes to the Property since purchasing it in 2016.
9. The Board found that Mr. O'Donnell testified that the new septic system is in the rear of the Property and the peak tanks are in the front of the Property. The septic lines run along the side of the existing dwelling.
10. The Board found that Mr. O'Donnell testified that the neighbor's dwelling encroaches on his property and an easement was prepared prior to the sale of his property.
11. The Board found that Mr. O'Donnell testified that the variances will not alter the character of the neighborhood.

12. The Board found that Mr. O'Donnell testified that the shed cannot be moved into compliance due to the existing septic system. The septic system is the only location where DNREC would give approval.
13. The Board found that Mr. O'Donnell testified that the proposed porch will be seven (7) feet wide and run the length of the existing dwelling.
14. The Board found that Mr. O'Donnell testified that a porch which is less than seven (7) feet wide would not wide enough for reasonable use.
15. The Board found that Mr. Jones testified that the existing dwelling encroaching onto the lot and size of the Property make this property unique.
16. The Board found that Mr. Jones testified that the Property is also unique because it is a corner lot.
17. The Board found that Mr. Jones testified that the porch allows for protected entrance to and from the home. A porch on the side could only be three (3) feet wide but it would not meet code requirements as the rail needed for the porch would not provide a walking platform which is wide enough about which to walk.
18. The Board found that Mr. Jones testified that the variances are necessary to enable reasonable use of the Property.
19. The Board found that Mr. Jones testified that the difficulty has not been created by the Applicants.
20. The Board found that Mr. Jones testified that the variances will not alter the character of the neighborhood. Other homes have portions thereof which protrude into setback areas.
21. The Board found that Mr. Jones testified that the variances sought are the minimum variances to afford relief as the porch was designed to minimize the need for a variance while still providing for usable space.
22. The Board found that no parties appeared in support of or in opposition to the Application.
23. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, which the Board finds credible, persuasive, and un rebutted, the Board determined that the application for the variances met the standards for granting a variance. The findings below further support the Board's decision to approve the Application.
  - a. The Property has several unique conditions which have created an exceptional practical difficulty. First, the Property is quite small as it is only 50 feet wide and consists of 5,000 square feet. Second, the eastern side of the Property is adjacent to a street so a larger setback requirement on that side the lot is required. Third, the dwelling on the neighboring property to the west encroaches 3.3 feet onto this lot. This condition is certainly unique and makes it less desirable for the Applicant to build on the west side of the lot. Fourth, the septic system needed to be replaced and the Applicants were limited in where a new system could be placed due to environmental regulations. These conditions have all limited the building envelope on the Property and have created an exceptional practical difficulty for the Applicants.
  - b. Due to the uniqueness of the Property, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. As previously discussed, the Property has a very small building envelope and the variances are necessary so that the Applicant can retain an existing shed, dwelling, and outdoor shower and to construct a porch on the Property. These structures are all necessary to enable the reasonable use of the Property. The Board notes that the shed cannot be moved due to the location of the septic system. The house has been on the lot since the 1950s and pre-dates the enactment of the Sussex County Zoning Code. The porch is needed because the dwelling consists of only 625 square

feet, which is very small, and the porch will afford some additional space to safely access the home. The Board gives great weight to the testimony of the Applicant's builder who testified that the porch cannot be constructed in compliance with the Code on the side of the Property without a variance either. The construction of the porch in the front of the dwelling appears to make sense and will provide the Applicants with a safer access to the dwelling. Ultimately, the Board finds that the structures are reasonable in size, shape, and location and that the variances are necessary to enable reasonable use of the Property.

- c. The exceptional practical difficulty was not created by the Applicants. The Applicants did not create the unusual conditions of the Property which have previously been discussed and which greatly limit the building envelope. Importantly, the dwelling, shed, and outdoor shower were on the Property prior to the Applicants' purchase thereof. It is clear to the Board that the exceptional practical difficulty was caused by the unique physical conditions of the Property and not by the actions of the Applicants.
- 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 dwelling has been in its present location since the 1950s and the shower and shed predate the Applicants' purchase of the Property. Despite the longstanding location of the dwelling, no complaints were noted in the record by neighbors. Likewise, no complaints were noted about the outdoor shower or the shed. The proposed porch will be similarly situated as other porches in the neighborhood. No evidence was submitted demonstrating 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 Applicants have demonstrated that the variances sought will allow the Applicants to retain a modest dwelling, shed, and outdoor shower and to construct a reasonably sized porch on the lot.

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 July 13, 2016