

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: FRANCES M. WILLNER

(Case No. 11785)

A hearing was held after due notice on June 20, 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 front yard setback requirement.

Findings of Fact

The Board found that the Applicant is seeking a variance of 6.4 feet from the thirty (30) feet front yard setback requirement for an existing covered porch. This application pertains to certain real property located on the south side of Hidden Acre Drive approximately 124 feet west of Tranquility Lane (911 Address: 32285 Hidden Acre Drive, Frankford); said property being identified as Sussex County Tax Map Parcel Number 1-34-11.00-608.00.

1. The Board was given copies of the Application, letters of no objection to the Application, a building permit dated May 13, 2002, a photograph of the dwelling, a portion of the tax map of the area, an aerial photograph of the Property, and a survey dated March 21, 2016.
2. The Board found that the Office of Planning & Zoning received two (2) letters of support to the Application and no correspondence in opposition to the Application.
3. The Board found that Shannon Carmean Burton, Esquire, presented the Application on behalf of the Applicant and submitted exhibits to the Board including an affidavit of Frances Willmer, a photograph of the Property and letters in support of the Application.
4. The Board found that Mrs. Burton stated that the Applicant purchased the Property with her husband in 2006 and the Applicant's husband has since passed away. The covered porch existed at the time of purchase in 2006.
5. The Board found that Mrs. Burton stated that the Applicant entered a contract to sell the Property in February 2016 and a survey completed for settlement showed the encroachment of the porch into the front yard setback area. The Applicant was not aware of the encroachment prior to the survey in 2016 and believed that the porch complied with all applicable zoning laws.
6. The Board found that Mrs. Burton stated that the Applicant has made no modifications or additions have been made to the porch since the Applicant purchased the Property.
7. The Board found that Mrs. Burton stated that the Property is unique due to its irregular shape and is located along a curved portion of the adjacent road. The exceptional practical difficulty is due to the uniqueness of the Property.
8. The Board found that Mrs. Burton stated that the Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code.
9. The Board found that Mrs. Burton stated that the variance is necessary to enable reasonable use of the Property as the porch provides access to the dwelling.
10. The Board found that Mrs. Burton stated that the exceptional practical difficulty was not created by the Applicant.
11. The Board found that Mrs. Burton stated that the variance does not alter the essential character of the neighborhood, the use does not impair the use or development of the adjacent properties, and the use is not detrimental to the

public welfare. There have been no complaints from the neighbors about the location of the porch.

12. The Board found that Mrs. Burton stated that the variance is the minimum variance to afford relief and the variance requested represents the least modification of the regulation at issue.
13. The Board found that Mrs. Burton stated that, since no permit for the porch could be found, the Applicant obtained a building permit for the covered porch.
14. The Board found that Mrs. Burton stated that the edge of the road and the location of the property line could create confusion.
15. The Board found that no parties appeared in support of or in opposition to the Application.
16. 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 unrebutted, 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 in shape as the front property line is curved and the front yard is significantly narrower than the rear yard. These unique conditions have created an unusual building envelope. The situation is also unique because a previous owner placed the encroaching porch and the Applicant was unaware of the encroachment until recently. The Property is also unique because the front yard property line does not line up with the edge of paving for the adjacent road. This condition gives the impression that the front yard is larger than it actually is. The uniqueness of the situation and the conditions of the Property created an exceptional practical difficulty for the Applicant who seeks to retain the porch on the lot.
 - b. Due to the uniqueness of the Property and the situation, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The porch was placed on the Property but encroaches into the front yard setback area. The Applicant is unable to retain the porch without violating the Sussex County Zoning Code. The porch would either have to be moved or a significant portion thereof would have to be removed. A reduction in the size of the porch would likely render it unable to be used. The porch is currently used as access to the dwelling so it is important to the Applicant. 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 porch to remain on the Property. The Board is convinced that the shape and location of this porch are also reasonable, which is confirmed when reviewing the survey provided by the Applicant.
 - c. The exceptional practical difficulty was not created by the Applicant. The Applicant did not create the unique shape of the lot which has left an unusual front yard property line. Likewise, the Applicant reasonably believed that the porch complied with the setback requirements as the porch was placed on the Property prior to the Applicant's acquisition thereof and no complaints about its location had been noted to the Applicant even though she has owned the Property for approximately 10 years. Furthermore, the porch was placed on the Property by a prior owner so the encroachment was clearly not created by the Applicant. It is thus clear to the Board that the exceptional practical difficulty was created by the unique shape of the Property and the mistaken placement of the porch by a prior owner.
 - 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 have no effect on the character of the neighborhood. The pictures confirm that the porch has a neat appearance and the letters from neighbors indicate that they do not object to the variance. Despite notice to neighbors, no complaints were noted in the record about its location and the Applicant has not received any complaints either. Furthermore, 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.

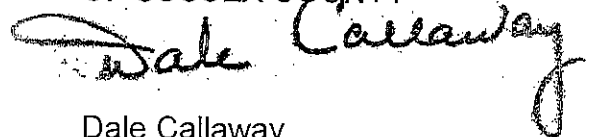
- e. The variance sought is the minimum variance necessary to afford relief and the variance requested represents the least modification possible of the regulation at issue. The Applicant has demonstrated that the variance sought will allow the Applicant to retain the porch on the Property. No additions to the dwelling are proposed.

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 August 16, 2016.