

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: BRIAN MILMOE & TONI MILMOE

(Case No. 11806)

A hearing was held after due notice on July 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 four (4) feet from the ten (10) feet rear yard setback requirement for a proposed four-season room. This application pertains to certain real property located on the northwest side of Fresh Pond Road approximately 492 feet west of Hickman Road (911 Address: 30900 Fresh Pond Road, Ellendale); said property being identified as Sussex County Tax Map Parcel Number 1-34-9.00-1171.00.

1. The Board was given copies of the Application, a portion of the tax map of the area, an aerial photograph of the Property, an architectural drawing of the proposed addition, a petition supporting the Application, a survey dated October 17, 2014, and a survey of the Property dated January 19, 2015.
2. The Board found that the Office of Planning & Zoning received two (2) letters of support and no correspondence in opposition of the Application.
3. The Board found that Brian Milmoe was sworn in to testify about the Application.
4. The Board found that Mr. Milmoe testified that the rear yard of the Property is adjacent to common areas which include the community's swimming pool, pool house, and mechanical room. There is a vinyl fence around the pool area but the proposed sunroom can be seen from the pool.
5. The Board found that Mr. Milmoe testified that the Property is shallow and small. Four of the six model homes offered by the builder could not fit on the lot within the building envelope.
6. The Board found that Mr. Milmoe testified that there are thirty-six (36) lots in the development and there are three (3) lots similar in size to the Property. The neighboring lot to the north is shallower than the Property. The Property was the only available lot in the community when the Applicants looked for a lot in this neighborhood.
7. The Board found that Mr. Milmoe testified that other lots in the neighborhood are large enough to accommodate such addition.
8. The Board found that Mr. Milmoe testified that the dwelling is a 2 story dwelling consisting of 2,840 square feet. The dwelling was built by NV Homes and the builder did not place the dwelling at the front setback line thereby limiting the ability to build in the rear yard. The Applicants knew, however, that they had limited space in the rear yard to build.
9. The Board found that Mr. Milmoe testified that the sunroom is to be used for large gatherings. The proposed sunroom will measure 14 feet by 18.7 feet. The Applicants actually prefer to build a room measuring 16 feet by 18.7 feet but the Applicants believe that a room measuring 14 feet by 18.7 feet will accommodate the Applicants' needs.
10. The Board found that Mr. Milmoe testified that a sunroom could be built in compliance with the Sussex County Zoning Code but would preclude the

reasonable use of that area as a gathering place for meals with use of a table owned by the Applicants for more than 20 years.

11. The Board found that Mr. Milmoie testified that the builder offered a deck or rear porch option but the Applicants declined that option because they knew they needed a four season room for the large gathering space. The Applicants were also not interested in a screen porch or deck.
12. The Board found that Mr. Milmoie testified that the Applicants were informed by the builder's representatives that they could build a deck or screen porch up to 5 feet from the rear property line and only learned of the rear yard setback requirement after receiving a survey at closing.
13. The Board found that Mr. Milmoie testified that the variance will not alter the essential character of the neighborhood. The improvement is consistent with other improvements in the neighborhood.
14. The Board found that Mr. Milmoie testified that the proposed addition will not impair the uses of neighboring properties and there will be no detriment to the public welfare.
15. The Board found that Mr. Milmoie testified that the variance requested is the minimum variance necessary to accommodate the Applicants' needs and table.
16. The Board found that Mr. Milmoie testified that the Applicants' mother will likely be moving into the Property and the sunroom will provide her with personal space.
17. The Board found that Mr. Milmoie testified that the table which has been in the family for many years does not fit in the bump out. The proposed addition will provide additional space needed to accommodate his large extended family and a large family table.
18. The Board found that Mr. Milmoie testified that, unless the table is fully extended, it cannot accommodate their large family.
19. The Board found that Mr. Milmoie testified that the Applicants have not considered adding space to the interior of the home to accommodate the room.
20. The Board found that Mr. Milmoie testified that the table is located in the house but cannot be extended to accommodate the family members in the current space.
21. The Board found that Mr. Milmoie testified that there is no dining room in the existing dwelling. The area which was designed to by the builder to be used as a dining room is used by the Applicants as a home office but that room could not fit the Applicants' table.
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, the Board determined that the application failed to meet the standards for granting a variance. The findings below further support the Board's decision to deny the Application.
 - a. The Board was not convinced that there was some unique physical condition related to the Property which has created an exceptional practical difficulty. The Property is a lot of a similar size to neighboring lots and is actually larger than the adjacent lot to the north. Though the lot is smaller than some lots in the neighborhood, the Applicants were aware of the size of the Property when they acquired it and knew that the building envelope was not as large as other lots in the neighborhood. Despite this knowledge, the Applicants decided to build a large, two-story home on the Property. No evidence was presented demonstrating that the Property has some unique, natural feature which has created an exceptional practical difficulty for the Applicants. Conversely, the difficulty, if any, appears to be entirely self-created by the Applicants' desire to exceed the setback requirements set forth in the Sussex County Zoning Code.

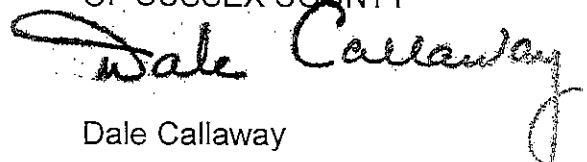
- b. The Board finds that the Property is already being used in strict conformity with the Sussex County Zoning Code and that the variance is not necessary for the reasonable use of the Property. As previously noted, the Property is already developed with a dwelling. In arguing that the variance is needed to enable reasonable use of the Property, the Applicants presented two main reasons for the need for the variance: 1) to provide space to accommodate their large family and a large oak table which has been in the family for many years and 2) to offer space for their mother. The Applicants, however, admitted that they had not explored other options such as using portions of the existing house for part of the room. The Applicants also acknowledged that they could build a sunroom in compliance with the Code. The Applicants argued that the size of the room built in compliance with the Code would not enable them reasonable use but the Board finds this argument unconvincing. The building envelope would allow for a sunroom consisting of 187 square feet, which is a large room that should be able to handle large gatherings. The Board was simply unconvinced that the Applicants need to expand the size of the room beyond the setback requirements in order to reasonably use of the Property.
- c. The exceptional practical difficulty was created by the Applicants. As previously discussed, there are no unique conditions to the Property which have otherwise created an exceptional practical difficulty. Rather, the difficulty, if any, appears to be entirely self-created by the Applicants' desire to exceed the setback requirements set forth in the Sussex County Zoning Code. The Applicants can clearly use the Property without the need for a variance.
- d. Since the variance is not necessary to enable the reasonable use of the Property, the Board also finds that the variance requested is not the minimum variance necessary to afford relief. Furthermore, the Board finds that no variance is necessary to afford relief since the Property is already developed with a house and there is space to build a reasonably sized sunroom on the Property in compliance with the Sussex County Zoning Code.

The Board denied the variance application finding that it failed to meet the standards for granting a variance.

Decision of the Board

Upon motion duly made and seconded, the variance application was denied. The Board Members in favor of the Motion to Deny were Mr. Dale Callaway, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman. Mr. Jeff Hudson voted against the Motion to deny the variance application.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY



Dale Callaway
Chairman

Date September 20, 2016.