

## BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

### IN RE: GARY MCQUATE

(Case No. 11837)

A hearing was held after due notice on September 12, 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 side yard setback requirements.

#### Findings of Fact

The Board found that the Applicant is seeking a variance of 1.3 feet from the ten (10) feet side yard setback requirement for an existing upper deck and a variance of 1.1 feet from the thirty (30) feet front yard setback requirement for an existing dwelling. This application pertains to certain real property located on the north side of Shady Lane approximately 1,178 feet east of Banks Lane (911 Address: 24346 Shady Lane, Millsboro); said property being identified as Sussex County Tax Map Parcel Number 2-34-17.00-150.00.

1. The Board was given copies of the Application, a portion of the tax map of the area, an aerial photograph of the Property, assessment records, the findings of fact for Case No. 3214-1986, an email from Joseph Berchock, a survey of the Property dated October 24, 1991, and a survey of the Property dated December 8, 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 Chris McQuate and Gary McQuate were sworn in to testify about the Application. The Applicants submitted pictures and a survey of the Property dated December 20, 1985 to the Board to review.
4. The Board found that Chris McQuate testified that the Applicants purchased the Property in 1985. The Applicants are now attempting to sell the Property and a recent survey showed the encroachments. The Applicants were previously unaware of any encroachments.
5. The Board found that Chris McQuate testified that the Applicants obtained a survey in 1991 as part of a refinance and the survey completed in 1991 did not show the encroachments.
6. The Board found that Chris McQuate testified that three (3) different surveys have been conducted on this Property.
7. The Board found that Chris McQuate testified that the deck existed on the Property when they acquired the Property and neighbors confirmed this to the Applicants. The deck did not appear on the earlier survey.
8. The Board found that Chris McQuate testified that the Applicants obtained a permit and variance for the garage in 1986. The Applicants always believed that the structures were in compliance with the Sussex County Zoning Code.
9. The Board found that Chris McQuate testified that the porch was built by a prior owner and they have made no additions to the porch. The Applicants made some repairs to the deck but have not changed its footprint.
10. The Board found that Chris McQuate testified that the edge of paving of Shady Lane does not match the front property line. There is approximately two to three feet between the edge of paving and the front property line.

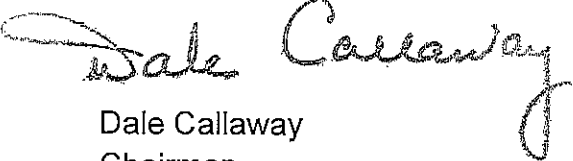
11. The Board found that no parties appeared in support of or in opposition to the Application.
12. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, which the Board found credible, persuasive, and un rebutted, the Board determined that 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 Applicants acquired the Property in 1985 and obtained a survey at that time only to find out thirty years later that the porch and deck encroach into the setback areas. These structures were located on the Property at the time they purchased the lot and no additions have been made thereto. This unique situation has created an exceptional practical difficulty for the Applicants who wish to keep those structures on the Property.
  - b. Due to the uniqueness of the situation, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Applicants seek to retain an existing porch and deck on the Property but are unable to do so without violating the Sussex County Zoning Code. These structures were installed by a prior owner in the setback areas. The encroachments are quite minor and, if only a few inches less, would be subject to the administrative variance process. The porch and the deck have been part of the home for many years and the Board is convinced that the variances are necessary to enable the reasonable use of the Property as the variances will allow the Applicants to retain those structures in their existing locations. The Board is convinced that the size, shape, and location of the deck and porch are reasonable.
  - c. The exceptional practical difficulty was not created by the Applicants. The Applicants did not place the deck or porch on the Property. The construction of the structures in the setback area by a prior owner has created an exceptional practical difficulty for the Applicants. The Board also notes that the original survey does not appear to show the location of the porch in proximity to the front property line and the deck with respect to the side property line. Had these structures been shown on the Property, it is likely that the need for the variances would have been discovered sooner; perhaps even before the Applicants acquired the Property.
  - 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 Board is convinced that the porch and deck will have no effect on the character of the neighborhood. The porch and deck have been on the Property for many years and, despite their longstanding location, no complaints were noted in the record about their location. No evidence was presented to the Board which demonstrates that the variances would somehow alter the essential character of the neighborhood or be detrimental to the public welfare. This lack of evidence is quite telling since the structures have been on the Property for so long. The Board also notes that the edge of paving of Shady Lane does not match the front property line and thereby makes the front yard appear larger than it actually is. As such, it is unlikely that the front yard encroachment is even noticeable without a survey.
  - 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 the porch and deck in their current location. No additions to those structures are being 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 November 9, 2016