

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: FRANK WESLEY

(Case No. 11845)

A hearing was held after due notice on September 19, 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 five (5) feet from the twenty-five (25) feet front yard setback requirement for a proposed porch. This application pertains to certain real property located on the southwest side of Judson Lane approximately 521 feet northeast of Seagrass Plantation Lane (911 Address: 30009 Judson Lane, Dagsboro); said property being identified as Sussex County Tax Map Parcel Number 1-34-7.00-697.00.

1. The Board was given copies of the Application, letters of support, an aerial photograph of the Property, pictures, an undated survey of the Property, and a portion of the tax map.
2. The Board found that the Office of Planning & Zoning received seven (7) letters of support to the Application and received no correspondence in opposition to the Application.
3. The Board found that Frank Wesley was sworn in to testify about the Application. Mr. Wesley submitted a survey of the Property dated August 5, 2016.
4. The Board found that Mr. Wesley testified that he built a dwelling in the development three (3) years ago and he would like add a porch. The same model dwelling now has an option for a front porch.
5. The Board found that Mr. Wesley testified that the Homeowners Association has approved the plan.
6. The Board found that Mr. Wesley testified that the Property is unique because it is pie-shaped and the front yard is curved. There is a ten (10) feet right-of-way in the front yard.
7. The Board found that Mr. Wesley testified that his house is 36 feet from Judson Lane but the front yard is actually only 26 feet deep. He believed that the front yard was 36 feet deep.
8. The Board found that Mr. Wesley testified that the Property cannot be otherwise developed in strict conformity with the Sussex County Zoning Code and the variance is necessary to afford reasonable use of the Property.
9. The Board found that Mr. Wesley testified that the porch is necessary to create a safe, covered entrance to his front door and, without a variance, the porch would only be one (1) foot deep.
10. The Board found that Mr. Wesley testified that he suffers from diabetes which affects his ability to walk. He also suffers from kidney failure.
11. The Board found that Mr. Wesley testified that the exceptional practical difficulty was not created by the Applicant due to the ten (10) feet right-of-way.
12. The Board found that Mr. Wesley testified that the developer developed the Property.
13. The Board found that Mr. Wesley testified that the porch will not alter the essential character of the neighborhood. The porch will meet the standards set forth by the homeowners association and will be similar to other porches in the neighborhood.

14. The Board found that Mr. Wesley testified that the porch will be six (6) feet wide and is the minimum sized porch he can build and still maneuver in and out of the dwelling.
15. The Board found that Mr. Wesley testified that the porch cannot be built within the interior of the dwelling due to the location of the load bearing wall.
16. The Board found that one (1) party appeared in support of the Application.
17. The Board found that no parties appeared in opposition to the Application.
18. 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 Property is unique in size and shape. The Property has a very narrow rear yard and a curved front yard. These conditions have created an unusually shaped building envelope. The situation is also unique because the Applicant suffers from diabetes and needs a covered porch to provide him with safe access to and from the dwelling. The porch, however, cannot be added to the dwelling without encroaching into the setback area. The Board finds that the unique physical conditions of the Property have created an exceptional practical difficulty for the Applicant and this difficulty has been exacerbated by the Applicant's medical condition.
 - 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 Property is small and has a unique shape and these conditions have created a unique building envelope for the Applicant. The Applicant needs to construct a covered porch to provide the Applicant with safe access to the dwelling but is unable to construct the dwelling in strict conformity with the Sussex County Zoning Code. A porch that would meet the Code requirements would only be one (1) foot wide and is not large enough for a porch. 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 be placed on the Property. The Board is convinced that the shape and location of this porch are 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 size and shape of the Property. These conditions were created by the developer prior to the Applicant's ownership thereof. The uniqueness of the Property has created a unique and limited building envelope. The Applicant's medical condition has also created an exceptional practical difficulty as he needs a covered porch in order to have safe access to the home but he is unable to build a porch affording him such access without a variance. Ultimately, the Applicant's unique situation and physical conditions of the Property have created the exceptional practical difficulty for the Applicant.
 - 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 porch will be similar to other porches in the neighborhood and will meet the community's standards. Based on the photographs provided by the Applicant, the porch will likely enhance the neighborhood. 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. Rather, the Board

received numerous letters of support from neighbors and the homeowners association. The Board also notes that the front yard is approximately ten (10) feet from the edge of paving of Judson Lane thereby giving the impression that the front yard is larger than it actually is.

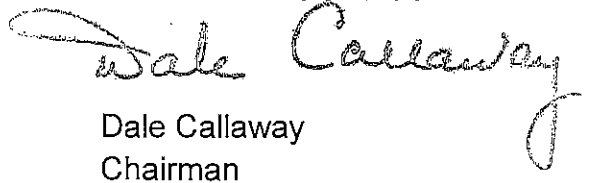
- e. The variance sought is the minimum variance necessary to afford relief and the variance requested represents the least modification possible of the regulation at issue. The Applicant has demonstrated that the variance sought will allow the Applicant to place the covered porch on the Property. The size of the porch is reasonable and provides the Applicant with safe access thereto. The Board also notes that the Applicant has explored other options, such as building to the interior of the home, as well.
- f. The Board also finds that the Applicant suffers from a disability and that the variance approval represents a reasonable accommodation.

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 22, 2016