

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: MARK S. WOOD AND NANCY L. WOOD

(Case No. 11856)

A hearing was held after due notice on October 17, 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 for a through lot.

Findings of Fact

The Board found that the Applicants are seeking a variance of 2.5 feet from the forty (40) feet front yard setback requirement for an existing screened in porch. This application pertains to certain real property located on the south side of Bayview Circle and north side of Bayville Road in Bayview Landing (911 Address: 37912 Bayview Circle, Selbyville); said property being identified as Sussex County Tax Map Parcel Number 5-33-13.00-130.00.

1. The Board was given copies of the Application, a survey of the Property dated August 2, 2016, a Certificate of Compliance issued on April 29, 2008, a Certificate of Compliance issued on January 15, 2008, an aerial photograph of the Property, and a portion of the tax map of the area.
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 Mark Wood was sworn in to testify about the Application. Ray Tomasetti, Esquire, appeared on behalf of the Applicants and submitted pictures for the Board to review.
4. The Board found that Mr. Tomasetti stated that the previous owners purchased the Property in January 2008. The dwelling was a new home at that time and it was built by NVR Homes.
5. The Board found that Mr. Tomasetti stated that a Certificate of Compliance for the dwelling was issued in January 2008 and a Certificate of Compliance for the deck and screened in porch was issued April 2008.
6. The Board found that Mr. Tomasetti stated that the porch is reasonable in size.
7. The Board found that Mr. Tomasetti stated that other homes and porches in the neighborhood are similarly situated.
8. The Board found that Mr. Tomasetti stated that the previous owner was unaware of the encroachment until a survey completed for settlement of the sale of the Property to the Applicants was completed.
9. The Board found that Mr. Tomasetti stated that the Property is a through lot and is unique because it fronts on two (2) roads. The two (2) front yard setback requirements create a practical difficulty to develop this Property.
10. The Board found that Mr. Tomasetti stated that the porch cannot be moved to comply with the Sussex County Zoning Code because a porch that would fit in the building envelope would be too small. The variance is, thus, necessary to enable reasonable use of the Property.
11. The Board found that Mr. Tomasetti stated that the exceptional practical difficulty was not created by the Applicants. The dwelling, deck, and porch were placed on the Property by a prior owner.
12. The Board found that Mr. Tomasetti stated that the variance will not alter the character of the neighborhood and the use is not detrimental to the public welfare.

13. The Board found that Mr. Tomasetti stated that the structures have been on the Property for 8 years.
14. The Board found that Mr. Tomasetti stated that the variance requested is the minimum variance necessary to afford relief.
15. The Board found that Mr. Wood, under oath, affirmed the statements made by Mr. Tomasetti.
16. The Board found that Mr. Wood testified that the dwelling faces Bayview Circle East and there is no access to the Property from Bayville Road.
17. The Board found that Mr. Wood testified that the property line and the edge of paving for Bayville Road do not match which makes the lot appear larger.
18. The Board found that Mr. Wood testified that the dwelling, screened in porch, and deck were built in 2008 and that there have been no changes made to the structures.
19. The Board found that Mr. Wood testified that there have been no complaints from the neighbors.
20. The Board found that no parties appeared in support of or in opposition to the Application.
21. 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 as it is a lot with road frontages on two roads and the lot is not particularly large. These conditions greatly restrict the building envelope on the Property. While the Property is considered a through lot, the Applicants do not have direct access to Bayville Road and only access the Property from Bayview Circle East. The Applicants also only recently purchased the Property and the structures were placed on the Property by a prior owner 8 years ago. The structures were believed to have been compliant with the Sussex County Zoning Code because Certificates of Compliance were issued. The confusion appears to have stemmed from the fact that the edge of paving of Bayville Road is actually several feet from the property line of the Property. Therefore, the side of the Property facing Bayville Road appears larger than it actually is. It is clear to the Board that the lot's unique characteristics and the placement of the structures by a prior owner have created an exceptional practical difficulty for the Applicants who seeks to retain an existing screened in porch on the lot.
 - b. Due to the uniqueness of the lot, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property is bordered on two sides by roads and has unique setback requirements even though the Applicants can only access the Property from one of those roads. The Applicants seek to retain an existing screened-in porch of a reasonable size but are unable to do so without violating the Sussex County Zoning Code. 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 an existing screened-in porch on the Property. The Board is convinced that the shape and location of the screened-in porch are also reasonable, which is confirmed when reviewing the survey provided by the Applicants. The Board notes that a porch that would comply with the Code would likely be too small to be reasonably used.
 - c. The exceptional practical difficulty was not created by the Applicants. The Applicants did not create the shape and size of the lot or enact the setback requirements which have limited the building envelope of the lot. The Applicants did not construct the existing screened-in porch on the lot either.

The unique characteristics of the Property are clear when reviewing the survey. The Board is convinced that the exceptional practical difficulty was not created by the Applicants but was created the lot's unique characteristics. The Board also notes that the prior owners reasonably believed, to their detriment, that the porch complied with the Sussex County Zoning Code because a Certificate of Compliance was issued.

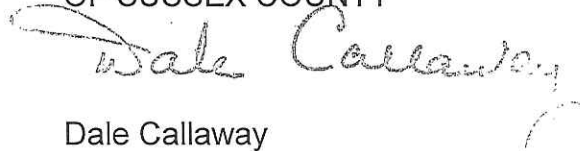
- d. The variance will not alter the essential character of the neighborhood nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare. The Board is convinced that the screened-in porch will have no effect on the character of the neighborhood. The porch has been on the Property since 2008 and no complaints were noted in the record about its location. From the pictures provided by the Applicants, the porch appears to be in good condition and similar to other porches in the neighborhood. The Board notes that the difference between the property line and the edge of paving of Bayville Road also make the side of the Property facing Bayville Road appear larger than it actually is. As such, the encroachment into the setback area on the Bayville Road side of the Property is likely unnoticeable without a survey. 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 Applicants have demonstrated that the variance sought will allow the Applicants to retain an existing porch on the Property. No additions to the porch 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 December 20, 2016.