

**BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY**

**IN RE: DOUGLAS ENZLER**

**(Case No. 11892)**

A hearing was held after due notice on December 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 variances from the front yard and side yard setback requirements.

Findings of Fact

The Board found that the Applicant is seeking a variance of 16.1 feet from the thirty (30) feet front yard setback requirement for existing steps, a variance of 12.9 feet from the thirty (30) feet front yard setback requirement for an existing dwelling, a variance of 0.1 feet from the ten (10) feet side yard setback requirement on the north side for an existing dwelling, and a variance of 3.2 feet from the ten (10) feet side yard setback requirement on the south side for an existing dwelling. This application pertains to certain real property is located on west side of Bayard Avenue approximately 414 feet south of Coastal Highway (Route 1) (911 Address: 1603 Bayard Avenue, Rehoboth Beach); said property being identified as Sussex County Tax Map Parcel Number 3-34-20.14-2.00.

1. The Board was given copies of the Application, a portion of the tax map of the area, an aerial photograph of the Property, a drawing of the proposed addition, and a survey of the Property dated October 15, 2015.
2. The Board found that the Office of Planning & Zoning received no correspondence in support to the Application and received one (1) letter of opposition to the Application.
3. The Board found that Doug Enzler was sworn in to testify about the Application. Chad Meredith, Esquire, presented the case on behalf of the Applicant and submitted a revised survey for the Board to review.
4. The Board found that Mr. Meredith stated that the Applicant proposes to square off the front of his dwelling and construct a screen-in porch.
5. The Board found that Mr. Meredith stated that the dwelling was built in 1967 and is considered a legal, non-conforming structure. The existing dwelling is an older beach cottage which was placed on the Property by a prior owner.
6. The Board found that Mr. Meredith stated that the proposed screened-in porch will not extend farther than the existing dwelling.
7. The Board found that Mr. Meredith stated that the steps to the porch already exist and the existing steps will be used to access the proposed porch.
8. The Board found that Mr. Meredith stated that the Property is unique because it borders the limits of the Town of Dewey Beach.
9. The Board found that Mr. Meredith stated that Dewey Beach has smaller setback requirements than Sussex County.
10. The Board found that Mr. Meredith stated that Bayard Avenue is approximately eighty (80) feet wide and the town has parking available along the front of the right-of-way.
11. The Board found that Mr. Meredith stated that the porch cannot otherwise be developed in strict conformity with the Sussex County Zoning Code.
12. The Board found that Mr. Meredith stated that the difficulty has not been created by the Applicant.

13. The Board found that Mr. Meredith stated that the variances will not alter the essential character of the neighborhood.
14. The Board found that Mr. Meredith stated that other homes in the area have similar covered porches.
15. The Board found that Mr. Meredith stated that the addition will enhance the Property and will bring the home more in conformity with other homes nearby.
16. The Board found that Mr. Meredith stated that the variances requested are the minimum variances necessary to afford relief.
17. The Board found that Mr. Meredith stated that there is a large area between the edge of paving for Bayard Avenue and the property line. There is approximately 15 feet of parking, 15 feet of drainage ditch, and 10 feet of grass between the edge of paving and the property line.
18. The Board found that Mr. Enzler, under oath, affirmed the statements made by Mr. Meredith.
19. The Board found that Mr. Enzler testified that there is adequate parking available.
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, 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 small lot which borders the Town of Dewey Beach. Other homes nearby, which are in the Town of Dewey Beach, are subject to different setback requirements and can build closer to the front yard property line. The Property is a small lot consisting of approximately 6,500 square feet as shown on the survey and was developed prior to the enactment of the Sussex County Zoning Code. As such, the existing dwelling and steps are considered non-conforming uses. The Applicant seeks permission to add a small screened-in porch to the front of the dwelling and this porch will line up with the existing dwelling in the front and side yards. Unfortunately, the dwelling already encroaches into those setback areas and, thus, this addition will encroach as well. The Board finds that the Property is unique due to its small size and the small size of the Property has created an exceptional practical difficulty. The Property is also unique because it was developed prior to the enactment of the Sussex County Zoning Code and the dwelling, which was created prior to the Code's enactment, encroaches into the setback areas.
  - 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 Applicant seeks to retain a reasonably sized dwelling and steps and to construct a small screened-in porch on the Property but is unable to do so without violating the Sussex County Zoning Code. Since the dwelling was constructed prior to the enactment of the Code and is located in the setback areas, there is no way the porch could be constructed without encroaching into the setback areas. The Board is thus convinced that the variances necessary to enable the reasonable use of the Property as the variances will allow the Applicant to retain the dwelling and steps and to construct the porch. The Board is convinced that the size, shape, and location of these structures are reasonable.
  - c. The exceptional practical difficulty was not created by the Applicant. The Applicant did not create the size of the Property or place the dwelling on the lot. Rather, these conditions predated the Applicant's ownership of the Property and even predated the enactment of the Zoning Code. The Applicant seeks now to make a reasonable addition to the home which will

not farther encroach into the setback areas but is unable to do so without violating the Code. The Board finds that the exceptional practical difficulty has been created by the small size of the lot and its development prior to the enactment of the Code. The unique characteristics of the Property are clear when reviewing the survey and the testimony presented by the Applicant.


- 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 dwelling, steps, and porch will have no effect on the character of the neighborhood. The dwelling and steps have been on the Property for approximately fifty (50) years and, despite their longstanding location, no complaints were noted in the record about their location. The Applicant now seeks to construct a reasonably sized porch which will be consistent with others in the neighborhood. The Board finds that this reasonable addition will not affect the character of the neighborhood. Rather, this porch will likely enhance the Property and, thus, the neighborhood. The Board notes that a letter was received in opposition to the Application where the opposition expressed concern about the effect of the variances on property values. This letter provides no specific insight as to how the variances would adversely affect property values. No market studies or similar documentation or evidence regarding the effect on property values was provided. Notably, the opposition provided no evidence as to the presumably negative impact the existing dwelling and steps has had on the property values in the neighborhood. The Board would expect that, given the age of the existing structures, that some evidence to support this claim would be provided. A blanket statement that the variances will affect property values does not rise to a level of substantial evidence which convinces the Board that the structures have or will affect property values or, more importantly, the essential character of the neighborhood. The Board also notes that the Property is located adjacent to lands within the Town of Dewey Beach which has looser setback requirements. In light of the different setback requirements on adjacent properties, it is difficult for the Board to see how the granting of these variances would affect property values or be detrimental to the public welfare. The Board also notes that there is a significant distance between the front property line and the edge of paving of Bayard Avenue. This large gap gives impression that the Property has a larger front yard than it actually does. As such, the Board finds that it is unlikely the front yard encroachments would even be noticeable. Likewise, the encroachments into the north side yard are only 0.1 feet into the setback area which is barely noticeable. Ultimately, after consideration of the arguments raised by the opposition, the Board was not convinced that the variances would somehow alter the essential character of the neighborhood or be detrimental to the public welfare.
- 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 Applicant has demonstrated that the variances sought will allow the Applicant to retain the dwelling and steps in their current location and to construct a reasonably sized porch on the lot. The porch will not extend farther into the setback areas than the existing dwelling and will square off the existing house.

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 2/7/2017