

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

**IN RE: J & N HICKMAN FAMILY**

**(Case No. 11931)**

A hearing was held after due notice on March 20, 2017. The Board members present were: Mr. Dale Callaway, Mr. John Mills, 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 3.1 feet from the thirty (30) feet front yard setback requirement for an existing porch. This application pertains to certain real property located 270 feet east of Coastal Highway (Route 1), on the southwest corner of Evergreen Road and Dune Road (911 Address: 3 Dune Road, Bethany Beach); said property being identified as Sussex County Tax Map Parcel Number 1-34-17.20-236.00.

1. The Board was given copies of the Application, a survey dated January 25, 2017, an aerial photograph of the Property, a portion of the Sussex County Zoning Code, and a portion of the tax map.
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 Richard Malinowski and Chad Hickman were sworn in to testify about the Application and they submitted pictures of the Property to the Board to review.
4. The Board found that Mr. Malinowski testified that he purchased the home in January 2017 and, during the closing process, the parties discovered the encroachment.
5. The Board found that Mr. Malinowski testified that the porch is supported by large pilings and was existing at the time of purchase.
6. The Board found that Mr. Malinowski testified that the house has been rented since 1997-1998.
7. The Board found that Mr. Malinowski testified that all the neighboring homes are in line with the Applicant's porch. The old setback requirements in the community were 25 feet from the front yard property line.
8. The Board found that Mr. Hickman testified that his parents bought the home in 1997 and the encroachment was not discovered at that time.
9. The Board found that Mr. Hickman testified that the house was originally built in 1972 or 1973.
10. The Board found that Mr. Hickman testified that the house was remodeled for aesthetic purposes but the same floorplan was kept. There have been no additions made to the existing home but his family replaced the wood on the deck and replaced the siding.
11. The Board found that Mr. Hickman testified that all the older neighboring homes line up at 25 feet from the front yard property line.
12. The Board found that Mr. Hickman testified that his family did not know of the encroachment until right before selling the Property to Mr. Malinowski.
13. The Board found that Mr. Malinowski testified that he purchased the home with a preexisting condition and neither he or Mr. Hickman knew about the nonconforming porch until reviewing the survey prior to closing.
14. The Board found that Mr. Malinowski testified that there have been no complaints from any neighbors.

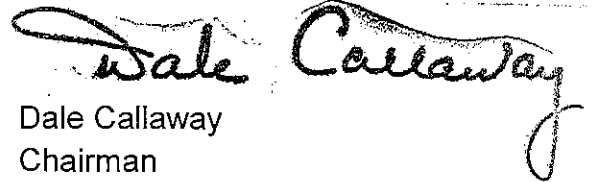
15. The Board found that Mr. Malinowski testified that the Property is a corner lot and there is about three feet from the front yard fence to the shoulder of the road. There is approximately 30 feet between the edge of paving and the porch.
16. The Board found that four (4) parties appeared in support 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 as it is a corner lot in a community which originally had setback requirements of only 25 feet. Since the lot is a corner lot, the building envelope is smaller for the Property than similarly sized lots which are not corner lots. The Applicant recently sold the Property and, as part of the settlement process, a survey was obtained. The survey demonstrates that a small portion of the existing porch encroaches into the front setback requirement. This encroachment was not previously discovered even though the porch has been on the Property for over forty (40) years. The encroachment of the porch, which was constructed by a prior owner, is not easily noticeable because the front yard of the lot does not match the edge of paving of Dune Road. As such, the Property appears to be larger than it actually is. These conditions have created a unique situation and an exceptional practical difficulty for the Applicant, who seeks to keep the porch on the Property in its existing location.
  - b. Due to the uniqueness of the lot and the situation, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The building envelope is limited due to the corner lot setback requirements. The Applicant seeks to retain a porch which encroaches into the setback area. The porch is located on several pilings and it is clear to the Board that the porch cannot be moved into compliance. As such, the variance is necessary to enable reasonable use of the Property. The Board is convinced that the size, shape, and location of the 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 corner lot and the Applicant did not place the porch on the Property. Rather, the porch was constructed by a prior owner in the 1970s and has been its existing location for many years. These conditions have made it clear that the exceptional practical difficulty was not created by 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. No complaints were noted in the record about the location of the porch and no evidence was presented which would indicate that the variances would somehow alter the essential character of the neighborhood or be detrimental to the public welfare. The Board also notes that the encroachment into the front yard setback is also unlikely to be noticed due to the difference between the edge of paving and the property line.
  - e. The variance sought is the minimum variance necessary to afford relief and the variance requested represents the least modification possible of the regulations at issue. The Applicant has demonstrated that the variance sought will allow the Applicant to retain a reasonably sized 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. John Mills, Mr. Norman Rickard, and Mr. Brent Workman. No Board Member voted against the Motion to approve the variance application. Mr. Jeff Hudson did not participate in the discussion or vote on this 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 May 2, 2017.