

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

**IN RE: DAVID WAYNE SELLERS & MONICA SELLERS**

**(Case No. 11936)**

A hearing was held after due notice on April 3, 2017. The Board members present were: Mr. Dale Callaway, Mr. John Mills, Mr. Jeff Hudson, Mr. Norman Rickard, Mr. Brent Workman.

Nature of the Proceedings

This is an application for variances from the front and side yard setback requirements.

Findings of Fact

The Board found that the Applicants are requesting a variance of 15 feet from the thirty (30) feet front yard setback requirement for an existing porch, a variance of 3.6 feet from the thirty (30) feet front yard setback requirement for an existing manufactured home, a variance of 0.5 feet from the five (5) feet side yard setback requirement on the south side for an existing shed, and a variance of 0.3 feet from the five (5) feet side yard setback requirement on the south side for an existing shed. This application pertains to certain real property located on the west side of North Drive approximately 782 feet west of Munchy Branch Road (911 Address: 403 North Drive, Rehoboth Beach); said property being identified as Sussex County Tax Map Parcel Number 3-34-13.00-60.00.

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 survey of the Property dated January 10, 2017, a building permit application, and Findings of Fact for Case No. 4851-1992.
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 David Sellers was sworn in to testify about the Application. Bill Schab, Esquire, presented the case on behalf of the Applicants. Mr. Schab submitted a letter of support into the record.
4. The Board found that Mr. Schab stated that the Applicants recently purchased the Property. The sellers inherited the Property from their mother who had owned the Property since 1973 and placed a manufactured home on the lot.
5. The Board found that Mr. Schab stated that the manufactured home was located in the front yard setback and, in 1987, the existing porch was added to the front of the home.
6. The Board found that Mr. Schab stated that, in 1992, Sussex County informed the previous owner that the porch encroached into the front yard setback area so the previous owner applied for and obtained a variance from the Board for the porch. Unfortunately, the previous owner assumed that her home was 30 feet from the front property line so the variance requested for the porch was not correct. The home is only 26.4 feet from the front property line.
7. The Board found that Mr. Schab stated that the variances will not alter the essential character of the neighborhood.
8. The Board found that Mr. Schab stated that the home has been on the Property more than 40 years and the porch has been on the Property for 30 years.
9. The Board found that Mr. Schab stated that a neighbor has submitted a letter supporting the Application.
10. The Board found that Mr. Sellers, under oath, affirmed the statements made by Mr. Schab.

11. The Board found that Mr. Schab stated that the edge of pavement does not match the front property line.
12. The Board found that Mr. Sellers testified that the shed will be moved into compliance and the variances for the shed are not needed.
13. The Board found that no parties appeared in support of or in opposition to the Application.
14. 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 because the front property line does not match the edge of paving. Based on the survey and aerial photographs, it is clear that there is actually significant gap between the front property line and the edge of paving of North Drive. This gap gives the false impression that the front yard is larger than it actually is. The situation is also unique because a previous owner placed her home and added a porch to the front of the home many years ago and reasonably believed that the home complied with the setback requirement. In 1992, she learned that the front porch did not comply with the setback requirement and she obtained a variance at that time only for the Applicants to later learn that the variance was incorrect due to an error in measurement. It appears as though the prior owner reasonably believed that the home complied with the front yard setback requirement (as she was not sent a violation notice about the home) and based her variance request for the porch on the incorrect assumption that the home complied with the setback requirements. This assumption appears to be based on incorrect assumption that the front property line matched the edge of paving of North Drive. These unique conditions and circumstances have created an exceptional practical difficulty for the Applicants who seek to retain porch and house on the lot.
  - 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 Property is deceptively smaller than it otherwise appears to be due to the significant discrepancy between the front property line and the edge of paving. The Applicants seek to retain a porch and house of 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 reasonably sized house and porch to remain on the Property. The Board is convinced that the shape and location of the house and porch are also reasonable, which is confirmed when reviewing the survey provided by the Applicants. The structures have been on the Property for decades and moving the structures into compliance would likely be difficult, if not impossible, given the age of the structures.
  - c. The exceptional practical difficulty was not created by the Applicants. The Applicants did not create the unusual front yard of the Property. It is clear from the record that the Property was developed many years prior to the Applicants' purchase thereof. The uniqueness of the Property and its characteristics have created the exceptional practical difficulty. The unique characteristics of the Property are clear when reviewing the survey. Additionally, the Applicants did not place the structures on the Property. Those structures were placed on the Property by prior owners. The Board is convinced that the exceptional practical difficulty was not created by the

Applicants but was created the lot's unique characteristics and by the placement of the structures in the setback areas by prior owners.

- 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 house and porch will have no effect on the character of the neighborhood. The structures have been on the Property for at least thirty (30) years yet no complaint has been noted in the record. If the structures had some negative impact on the neighborhood, the Board would expect evidence demonstrating such effect to be introduced into the record. Rather, the Board received a letter in support of the Application from a neighbor. Furthermore, 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.
- 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 a reasonably sized house and porch on the Property. No additions or modifications to the house and porch are being proposed.
- f. The Board notes that no variances for the encroaching shed are needed because the Applicants are able to move shed into compliance with the side yard setback requirement. The variances for the shed are, thus, denied.

The Board granted the variance application for the porch and house only finding that it met the standards for granting a variance. The Board denied the variance application for the shed finding that it did not meet the standards for granting a variance.

Decision of the Board

Upon motion duly made and seconded, the variance application was approved in part and denied in part. The Board Members in favor were Mr. Dale Callaway, Mr. Jeff Hudson, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman. No Board Members voted against the Motion to approve the variance application in part and to deny the variance application in part.

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 16, 2017