

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

**IN RE: JEREMY BOOROS & STACY BOOROS**

**(Case No. 11956)**

A hearing was held after due notice on May 1, 2017. 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 Applicants are seeking a variance of 5.2 feet from the ten (10) feet side yard setback requirement on the west side for a proposed outside shower, a variance of 4.9 feet from the ten (10) feet side yard setback requirement on the west side for a proposed dwelling, a variance of 5.4 feet from the ten (10) feet side yard setback requirement on the east side for a proposed dwelling, a variance of 3.6 feet from the thirty (30) feet front yard setback requirement for an existing dwelling, a variance of 9.8 feet from the thirty (30) feet front yard setback requirement for a proposed covered porch. This application pertains to certain real property is located on the north side of Hayes Avenue approximately 118 feet west of Jefferson Avenue (911 Address: 13024 Hayes Avenue, Selbyville); said property being identified as Sussex County Tax Map Parcel Number 5-33-20.19-52.01.

1. The Board was given copies of the Application, a portion of the tax map of the area, an aerial photograph of the Property, and a site plan of the Property dated February 1, 2017.
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 Jeremy Booros was sworn in to testify about the Application. Mr. Booros submitted exhibits to the Board to review including portions of a survey of the Property, an aerial photograph of the Property, letters from neighbors, and drawings of the proposed addition.
4. The Board found that Mr. Booros testified that his family is growing and he proposes to add to the existing dwelling to accommodate his growing family.
5. The Board found that Mr. Booros testified that the existing dwelling, which was built in 1978, is small and consists of 1,200 square feet.
6. The Board found that Mr. Booros testified that the Property is 50 feet wide and the home is very narrow.
7. The Board found that Mr. Booros testified that the proposed addition will make the dwelling a total of 2,400 square feet.
8. The Board found that Mr. Booros testified that the proposed addition does not exceed the existing width of the home and the home will be within the rear yard setback area. The addition will include two bedrooms, two bathrooms, and a family room. The addition will also include a screened porch and outdoor shower. The HVAC system will be housed above the outside shower.
9. The Board found that Mr. Booros testified that the Property is unique as it is a narrow lot.
10. The Board found that Mr. Booros testified that the Property is not developable without having to tear down the existing dwelling and that option is not financially feasible.

11. The Board found that Mr. Booros testified that the Delaware / Maryland line is Hayes Avenue. Across the street from the Property on the Maryland side of Hayes Avenue are townhomes.
12. The Board found that Mr. Booros testified that the home is much smaller than four story homes constructed nearby.
13. The Board found that Mr. Booros testified that the neighboring homes encroach as equally or more with larger structures.
14. The Board found that Mr. Booros testified that the dwelling with addition will not be located any farther back in the rear yard than neighboring homes. No neighbor views will be hindered by the proposed addition.
15. The Board found that Mr. Booros testified that two out of the four neighbors have been contacted and they have no complaints.
16. The Board found that Mr. Booros testified that the proposed addition is the minimum to afford relief for their family.
17. The Board found that Mr. Booros testified that the current dwelling is already a nonconforming structure.
18. The Board found that Mr. Booros testified that the variances requested are the minimum variances necessary to afford relief.
19. The Board found that Mr. Booros testified that the variances will not alter the essential character of the neighborhood.
20. The Board found that Mr. Booros testified that the Applicants purchased the Property two years ago.
21. The Board found that Mr. Booros testified that there is about eight feet from the edge of paving of Hayes Avenue to the front property line.
22. The Board found that Mr. Booros testified that there is flooding in the rear yard.
23. The Board found that no parties appeared in support of or in opposition to the Application
24. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, which the Board finds 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 clearly unique as it is a small and narrow lot with flooding problems in the rear yard. The Property was originally developed with a home in 1978 and the Applicants propose to construct additions and renovations to the home to accommodate their growing family. The Property is only fifty (50) feet wide and consists of only 4,803 square feet; as is clearly shown on the survey. The size and shape of the Property have created an exceptional practical difficulty for the Applicants. These unique physical conditions have created a small and limited building envelope for the Applicants. The flooding in the rear yard also limits the Applicants from constructing additions closer to the rear yard property line.
  - b. Due to the uniqueness of the Property, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property was created many years ago and the home on the Property has been on the Property for nearly 40 years. The dwelling encroaches into the setback areas and the Applicants propose to construct additions which will expand the rear of the home. A small porch with steps will also be constructed in the front yard. The Applicants seeks to make these additions and to retain the existing dwelling and structures on the Property but are unable to do so without violating the Sussex County Zoning Code. Notably, the additions to the home will encroach a similar distance into the side yard setback areas as the existing home as the additions will be constructed along the existing building lines. The Board is convinced that the variances are necessary to

enable the reasonable use of the Property as the variances will allow the addition to be constructed and the existing dwelling and structures to remain on the Property. The Board is convinced that the size, shape, and location of these structures are reasonable, which is confirmed when reviewing the survey provided by the Applicants.

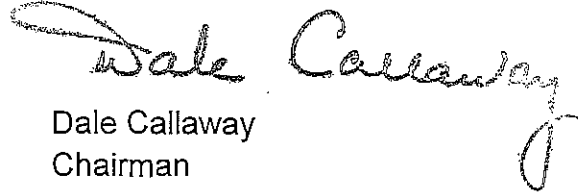
- c. The exceptional practical difficulty was not created by the Applicants. The Property was created and developed many years ago and is an undersized lot. The Board notes that the size and narrowness of the lot greatly limit the building envelope. The Applicants did not create the size and shape of the lot. Rather, those conditions pre-existed the Applicants' acquisition of the Property. These unique physical conditions have resulted in a limited building envelope and have created the exceptional practical difficulty for the Applicants. The Applicants also did not construct the existing home which already encroaches into the setback areas.
- 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 dwelling already exists on the Property and encroaches into the setback areas. The additions will encroach a similar distance into the side yard setback areas. Despite the longstanding encroachment of the house, no complaints about the home were noted in the record. Rather, the Board received letters of no objection from two neighbors. The Board notes that the drawings of the home evidence that the home will be reasonably sized and the testimony presented indicates that many homes in the neighborhood are much taller and larger. The Board also notes that the encroachments into the front yard setback area along Hayes Avenue are unlikely to be noticed because the property line does not match the edge of paving for Hayes Avenue. There is a gap of approximately 8 feet from the property line and the edge of paving. This gap also reduces the impact of an encroachment into the setback area. 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 construct reasonably sized additions to the existing home and to retain the existing home and structures on the Property. These additions are consistent with the existing home and the Board is convinced that the Applicants designed the additions in an attempt to minimize the encroachments while still providing enough space for their family.

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 May 16, 2017.