

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: TEVY SCHALFMAN & LINDA W. SCHLAFMAN

(Case No. 11992)

A hearing was held after due notice on July 24, 2017. The Board members present were: Mr. Dale Callaway, Ms. Ellen Magee, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for a variance from the rear yard setback requirement.

Findings of Fact

The Board found that the Applicants are seeking a variance of 4.0 feet from the ten (10) feet rear yard setback requirement for a proposed addition. This application pertains to certain real property located at the west side of Tivoli Court approximately 119 feet off Bella Via Way (911 Address: 32880 Tivoli Court, Ocean View); said property being identified as Sussex County Tax Map Parcel Number 1-34-12.00-2463.00.

1. The Board was given copies of the Application, a portion of the tax map of the area, a survey of the Property dated August 11, 2016, an aerial photograph of the Property, and drawings of the proposed addition.
2. The Board found that the Office of Planning & Zoning received three (3) letters of support, one (1) letter from the homeowners association for approval, and no correspondence in opposition to the Application.
3. The Board found that Tevy Schlafman and Linda Schlafman were sworn in to testify about the Application and submitted exhibits to the Board to review.
4. The Board found that Mr. Schlafman testified that the Applicants purchased the Property in September 2016.
5. The Board found that Mr. Schlafman testified that, when the Applicants purchased the Property, they were led to believe that an enclosed porch would not be a problem since the builder offered an enclosed porch as an option. The Applicants expressed an interest in the addition when constructing the house but felt the cost was too much at that time.
6. The Board found that Mr. Schlafman testified that the builder never mentioned the need for a variance for the porch. The Applicants thought the builder's costs for the porch was excessive so they chose to use a different contractor. The Applicants spoke with a contractor and he said that a variance would be needed.
7. The Board found that Mr. Schlafman testified that the plan has been submitted and approved by the homeowners association. His neighbors support the Application.
8. The Board found that Mr. Schlafman testified that the rear of the home faces a storm water management pond. The porch will extend to the rear yard setback area.
9. The Board found that Mr. Schlafman testified that there are no flooding issues in the area.
10. The Board found that Mr. Schlafman testified that the addition will be barely visible from his next-door neighbors.
11. The Board found that Mr. Schlafman testified that the Property is unique due to its shape and shallowness. The lot is pie-shaped.
12. The Board found that Mr. Schlafman testified that the Property is shallower than other lots in the neighborhood.
13. The Board found that Mr. Schlafman testified that the orientation of the house does not allow for the addition.

14. The Board found that Mr. Schlafman testified that the Applicants did not create the problem and they believed the addition was feasible when they purchased the Property.
15. The Board found that Mr. Schlafman testified that the variance will not alter the essential character of the neighborhood.
16. The Board found that Mr. Schlafman testified that the Applicants have worked with a contractor and architect to keep the addition consistent with the neighborhood.
17. The Board found that Mr. Schlafman testified that the addition will extend 4 feet into the rear yard setback area.
18. The Board found that Mr. Schlafman testified that a smaller addition could be built but a door wide enough to allow furniture to be moved needs to be 4 feet wide. He believes that the addition needs to be 8 feet wide to accommodate this use.
19. The Board found that Mr. Schlafman testified that the addition is similar to his neighbor's addition.
20. The Board found that Mr. Schlafman testified that the Applicants explored building the addition off of the side of the house but it is not a desirable placement.
21. The Board found that Mr. Schlafman testified that there is no possibility that the addition could be built towards the interior of the home because the addition would not be heated or cooled. The addition will have windows and fans.
22. The Board found that Mr. Schlafman testified that he suffers from allergies and prefers an enclosed area.
23. The Board found that Mrs. Schlafman testified that their builder was NV Homes and the salesperson informed the Applicants that they could build a deck measuring 8 feet wide but could seek a variance for an addition.
24. The Board found that Mrs. Schlafman testified the view from the rear yard is beautiful.
25. The Board found that no parties appeared in support of or in opposition to the Application.
26. The Board tabled the Application until August 7, 2017, at which time the Board discussed and voted on the Application.
27. 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 failed to meet the standards for granting a variance. The findings below further support the Board's decision to deny the Application.
 - a. The Applicants failed to convince the Board that the Property could not be developed in strict conformity with the Sussex County Zoning Code. Likewise, the Board was not convinced that the variance was necessary to enable the reasonable use of the Property. The Property is already improved by an existing dwelling and the Applicants seek to construct a porch that will extend into the rear yard setback area. The dwelling itself already provides the Applicants with reasonable use of the Property and the dwelling complies with the setback requirements thereby proving that the Property can be developed in strict conformity with the Sussex County Zoning Code. Assuming, *arguendo*, that a porch is necessary to enable reasonable use of the Property, the Board was not convinced that an encroachment into the setback area is necessary for the Applicants to construct a reasonably sized porch. Rather, there appears to be ample room to the north side of the Property for a porch to be constructed. The Applicants, however, chose not to build there because the location was "not desirable." The Board is simply unconvinced that the existence of the porch is necessary to enable reasonable use of the Property and that the Property could not otherwise be developed in strict conformity with the Code.
 - b. The Board finds that the exceptional practical difficulty by proposing to construct the porch into the setback area is self-created. The Applicant

failed to demonstrate that there was some unique physical characteristic related to the Property which has created the exceptional practical difficulty. Rather, even though there appears to be ample room in the side yard for the porch, Mr. Schlafman testified that an alternative placement of the porch in the side yard was "not desirable." As such, the Board was not convinced that the variance request was the product of a *need*. Instead, the variance request appears to be the product of a *want* as the owner seeks to place the porch as proposed for purposes of convenience and profit, and / or caprice.

- c. Furthermore, since a dwelling already exists on the Property, there is likely room for a porch to otherwise be placed on the Property, and the Board has decided that the variance is not necessary to enable reasonable use of the Property, the Board finds that the variance for the porch is not the minimum variance necessary to afford relief. Rather, no variance for the porch is necessary.

The Board denied the variance application finding that it failed to meet the standards for granting a variance.

Decision of the Board

Upon motion duly made and seconded, the variance application was denied. The Board Members in favor of the motion to deny were Mr. Dale Callaway, Ms. Ellen Magee, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman. No Board Member voted against the Motion to deny the variance application.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY


Dale Callaway
Chairman

Date September 19, 2017