

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: GENE C. HORNER & DORCAS A. HORNER

(Case No. 12046)

A hearing was held after due notice on November 6, 2017. The Board members present were: Mr. Dale Callaway, Ms. Ellen Magee, Mr. Bruce Mears, Mr. John Mills, 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 Applicants are seeking a variance of 8 feet from the forty (40) feet front yard setback requirement for an existing home and proposed porch. This application pertains to certain real property located at the southwest side of Progress School Road (Road 562) approximately 1,685 feet southwest of Seashore Highway (Route 404) (911 Address: 16104 Progress School Road, Bridgeville); said property being identified as Sussex County Tax Map Parcel Number 1-31-5.00-10.01.

1. The Board was given copies of the Application, a survey of the Property dated June 25, 1979, an aerial photograph of the Property, and a portion of the tax map of the area.
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 Gene Horner was sworn in to testify about the Application. Mr. Horner submitted photographs for the Board to review.
4. The Board found that Mr. Horner testified that the front property line is angled and that one portion of the front corner of the house complies with the setback requirement.
5. The Board found that Mr. Horner testified that the home was placed on the home by a prior owner in 1976 and he purchased the Property in 1979.
6. The Board found that Mr. Horner testified that the Property is poorly graded and he has dealt with water problems for years. He proposes to construct a porch off the front of the home and to extend the roofline so that storm water will drain away from the home.
7. The Board found that Mr. Horner testified that the proposed porch will add to the value of the Property.
8. The Board found that Mr. Horner testified that the front corner of the house is 39 feet from the front property line and the proposed porch will be 6 feet deep.
9. The Board found that Mr. Horner testified that he has been repairing considerable water damage and is making other improvements to the existing home.
10. The Board found that Mr. Horner testified that he believes the front property line matches the edge of paving.
11. The Board found that Mr. Horner testified that he spoke with his neighbors about the proposal.
12. The Board found that no parties appeared in support of or in opposition to the Application.
13. 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.

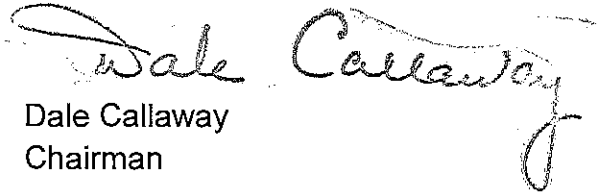
- a. The Property is unique due to its irregular shape and topography. The front part of the lot is angled thereby making the north side of the Property deeper than the south side of the Property. The unique shape of the Property has created an oddly shaped building envelope for the Applicants and has created an exceptional practical difficulty. The situation is also unique because the existing home was placed on the Property by a prior owner in 1976. Notably, only a small corner of the home encroaches into the front yard setback area. The Property is also unique due to its grading which slopes towards the home. This slope results in storm water running to the front of the home and has damaged the dwelling. The Applicants propose to remediate this problem by building a porch off the front of the home so that water can be directed away from the home. Ultimately, the Board finds that the uniqueness of the Property and the situation have created an exceptional practical difficulty for the Applicants.
- 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 home was placed on the Property over 40 years ago and a small corner of the home encroaches into the front yard setback area. The Property has a unique slope which leads to storm water draining towards the existing home and the Applicants seek to construct a porch to provide relief from this issue. The Applicants are unable to retain the existing dwelling in its location and add the porch without violating the Sussex County Zoning Code. The Board is convinced that the variance is necessary to enable the reasonable use of the Property as the variance will allow a reasonably sized home to remain on the Property and for the Applicants to construct a reasonably sized porch. The Board is convinced that the shape and location of the home and porch are also reasonable, which is confirmed when reviewing the survey provided by the Applicants.
- c. The exceptional practical difficulty was not created by the Applicants. The Applicants did not place the existing home on the lot or create the unique shape and topography of the lot. These unique physical conditions have created an exceptional practical difficulty for the Applicants because the angle of the front property line is quite steep and creates an odd building envelope and the Property's topography has led to water accumulating on the Property.
- 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 home and porch will have no effect on the character of the neighborhood. The home has been on the Property in its current location for over 40 years without complaint. The Applicants propose to construct a reasonably sized porch which will only encroach on a corner of the porch. Despite notification to neighbors, no evidence was presented which would indicate that the variance would somehow alter the essential character of the neighborhood or be detrimental to the public welfare.
- e. The variance sought is the minimum variance necessary to afford relief and the variance requested represents the least modification possible of the regulation at issue. The Applicants have demonstrated that the variance sought will allow the Applicants to retain the home on the Property and to construct a reasonably sized porch necessary to provide relief from the storm water problems found on the site. Furthermore, the Board notes that only a small corner of the home encroaches into the setback area.

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, Ms. Ellen Magee, Mr. Bruce Mears, Mr. John Mills, 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 January 9, 2018.