

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: ROSELL RIVERA

(Case No. 12176)

A hearing was held after due notice on August 6, 2018. 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 variances from the front yard setback requirement for existing structures.

Findings of Fact

The Board found that the Applicant is seeking a variance of 4.9 feet from the forty (40) feet front yard setback requirement for an existing dwelling with covered porch, a variance of 8 feet from the forty (40) feet front yard setback requirement for an existing dwelling with covered porch and steps, and a variance of 4.2 feet from the forty (40) feet front yard setback requirement for an existing dwelling with covered porch. This application pertains to certain real property on the south side of English Road, approximately 230 feet east of Curley Drive (911 Address: 19412 English Road, Millsboro); said property being identified as Sussex County Tax Map Parcel Number 3-33-3.00-1.06.

1. The Board was given copies of the Application, a notice of violation from Sussex County Planning & Zoning, building permit applications, a revised subdivision plan, an authorization to use an existing system from DNREC, a survey of the Property dated April 18, 2018, 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 the Application or in opposition to the Application.
3. The Board found that Erlin Rivera, Angie Rivera, and Rosell Rivera were sworn in to testify about the Application.
4. The Board found that Mr. Erlin Rivera testified that the Property is unique because it is located in an agricultural area and is a shallow lot which is not square.
5. The Board found that Mr. Erlin Rivera testified that the Property could not be otherwise developed because of the placement of the septic field in the rear yard of the Property. The septic system was on the Property when the Applicant purchased the lot in 2013.
6. The Board found that Mr. Erlin Rivera testified that the variances will not alter the essential character of the neighborhood as there are not many residential homes in the area.
7. The Board found that Mr. Erlin Rivera testified that the exceptional practical difficulty was not created by the Applicant.
8. The Board found that Mr. Erlin Rivera testified that that the requests are for the minimum variances necessary to afford relief.
9. The Board found that Mr. Erlin Rivera testified that there was a misunderstanding with the builder which caused the steps and porch to be placed in the setback area. The builder measured incorrectly and the mason made a mistake and extended the porch. The Applicant relied on several different, licensed contractors during the building process.
10. The Board found that Mr. Rosell Rivera testified that he relied on the contractors, who are all licensed.

11. The Board found that Mr. Rosell Rivera testified that the contractor measured from the road and not the property line and there is approximately 2-3 feet from the front property line to the edge of paving of the road.
12. The Board found that Mr. Rosell Rivera testified that the house could not have been placed farther back on the property due to the placement of the septic field.
13. The Board found that Mr. Rosell Rivera testified that he has received no complaints from neighbors about the structures.
14. The Board found that no parties appeared in support of or in opposition to the Application
15. 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 the placement of a septic system to the rear of an existing dwelling. The septic system was located on the lot when the Applicant acquired the Property and its location limited the location where the home could be built. The Property is also subject to a 50 foot wide easement along the east side of the Property thereby limiting development on that side of the Property. These conditions greatly limit the buildable area of the Property; particularly with regard to construction in the east and rear of the lot. These unique conditions have created an exceptional practical difficulty for the Applicant.
 - b. Due to the uniqueness of the Property, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Applicant seeks to retain an existing dwelling, covered porch, and steps but is 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 existing dwelling, covered porch, and steps to remain on the Property. The Board is convinced that the shape and location of the existing dwelling, covered porch, and steps are reasonable, which is confirmed when reviewing the survey provided by the Applicant.
 - c. The exceptional practical difficulty was not created by the Applicant. There was no evidence that the Applicant created the lot or placed the septic system on the lot. Rather, those conditions predated the Applicant's ownership of the Property and have limited the building envelope. The building envelope is further limited by the agricultural easement on the east side of the lot. These conditions have created the exceptional practical difficulty for the Applicant who seeks to retain an existing dwelling, covered porch, and steps. The Board also notes that the Applicant relied on licensed builders to construct the existing dwelling, covered porch, and steps in compliance with the Sussex County Zoning Code only to later learn of these encroachments. It is clear to the Board that the exceptional practical difficulty was not created by the Applicant.
 - 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 existing dwelling, covered porch, and steps will have no effect on the character of the neighborhood. The Property is located in an agricultural area and there was no evidence of any impact on neighboring properties. Importantly, the Applicant stated that he has received no complaints about the structures and no complaints were noted in the record either. The Board also notes that the survey indicates a gap between the

front property line and the edge of paving of English Road. As such, the encroachments into the front yard setback area is likely less noticeable than if the edge of paving matched the front property line.

- 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 Applicant has demonstrated that the variances sought will allow the Applicant to retain an existing dwelling, covered porch, and steps on the Property. No additions or modifications to those structures are 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. Bruce Mears, Mr. John Mills, and Mr. Brent Workman. Ms. Ellen Magee voted against the Motion to approve the variance application.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY


John Mills
Chairman

If the use is not established within two (2) years from the date below the application becomes void.

Date October 2, 2018