

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

**IN RE: JAMES F. WICKS, JR. & HEATHER WICKS**

**(Case No. 12202)**

A hearing was held after due notice on September 17, 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 Applicants are seeking a variance of 7.5 feet from the forty (40) feet front yard setback requirement for an existing porch and a variance of 9.5 feet from the forty (40) feet front yard setback requirement for existing steps. This application pertains to certain real property on the north side of Clay Road, approximately 24 feet east of Marsh Road (911 Address: 33857 Clay Road, Lewes) said property being identified as Sussex County Tax Map Parcel Number 3-35-12.06-57.00.

1. The Board was given copies of the Application, a survey of the Property dated July 11, 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 James Wicks and Heather Wicks were sworn in to testify about the Application and they submitted pictures of the Property and letters of support from neighbors.
4. The Board found that Mrs. Wicks testified that the Applicants renovated the dwelling, which is over 100 years old. Part of the renovation included the installation of a wrap-around porch. This porch was built in 2016 and the Applicants worked with Ammerman Construction. The Applicants relied on their builder to build the steps and porch in compliance with the Sussex County Zoning Code.
5. The Board found that Mrs. Wicks testified that the Property was sold earlier this year and the encroachment was discovered as part of the settlement process.
6. The Board found that Mrs. Wicks testified that the Property is unique because the house is located towards the front of the lot.
7. The Board found that Mrs. Wicks testified that the Property cannot be otherwise developed as there is no other place to put a front porch.
8. The Board found that Mrs. Wicks testified that the exceptional practical difficulty was not created by the Applicants because they relied on their builder.
9. The Board found that Mrs. Wicks testified that the variances will not alter the essential character of the neighborhood.
10. The Board found that Mrs. Wicks testified that the porch and steps enhance the aesthetics of the home.
11. The Board found that Mrs. Wicks testified that the variances requested are the minimum variances necessary to afford relief. The porch is only 7.5 feet wide, which is small.
12. The Board found that Mrs. Wicks testified that the porch is no closer to the road than other homes in the neighborhood.
13. The Board found that Mr. Wicks testified that there is approximately 15 feet from the front property line to the edge of paving of Clay Road.

14. The Board found that two (2) parties appeared in support of and no one appeared 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 the existing dwelling close to the front yard property line. The dwelling was constructed approximately 100 years ago and needed extensive renovations. As part of those renovations, the Applicants installed a porch and steps. The location of the dwelling and its need for renovations greatly limited the buildable area of the Property; particularly with regard to construction in the front of the lot. These unique conditions have created an exceptional practical difficulty for the Applicants.
  - b. Due to the uniqueness of the Property, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Applicants seek to retain an existing porch and steps 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 existing porch and steps to remain on the Property. The Board is convinced that the shape and location of the existing porch and steps are reasonable, which is confirmed when reviewing the survey provided by the Applicants. The Board notes that these structures could not be constructed in compliance with the Code due to the location of the house.
  - c. The exceptional practical difficulty was not created by the Applicants. There was no evidence that the Applicants created the lot or placed the dwelling on the lot so close to the front yard property line. Rather, those conditions predated the Applicants' ownership of the Property and have limited the building envelope and have created the exceptional practical difficulty for the Applicants who seek to retain an existing porch and steps. The Board also notes that the Applicants relied on a licensed builder to construct the existing 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 Applicants.
  - 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 porch and steps will have no effect on the character of the neighborhood. Pictures indicate that the porch and steps have improved the aesthetics of the dwelling. There was no evidence of any impact on neighboring properties. Importantly, no complaints about the structures were noted in the record either. Rather, the Board received letters of support from neighbors. The Board also notes that there is a significant gap between the front property line and the edge of paving of Clay 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 Applicants have demonstrated that the variances sought will allow the Applicants to retain an existing porch and steps on the Property. No additions or modifications to those structures are

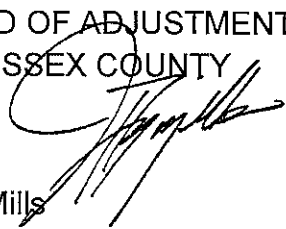
proposed. The Board notes that the porch is only 7.5 feet wide, which is small.

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

  
John Mills  
Chairman

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

Date November 20, 2018