

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: BRENDA L. KING

(Case No. 12220)

A hearing was held after due notice on October 15, 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, and maximum fence height requirements for existing structures.

Findings of Fact

The Board found that the Applicant is seeking a variance of 9.6 feet from the fifteen (15) feet front yard setback requirement for a covered front porch and a variance of 0.58 feet from the 3.5 feet fence height requirement for a fence. This application pertains to certain real property located on the southwest corner of Blackstone Drive and Topher Drive, approximately 237 feet east of Whites Neck Road (911 Address: 31566 Topher Drive, Ocean View) said property being identified as Sussex County Tax Map Parcel Number 1-34-12.00-1973.00.

1. The Board was given copies of the Application, photographs of the Property, a building permit application, a survey of the Property dated August 29, 2018, violation notices from the Planning & Zoning Department, 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 Brenda King and Dana Purkey were sworn in to testify about the Application and they submitted a letter of support from the Bowerset Homeowners Association
4. The Board found that Ms. King testified that the porch was constructed with a permit by her son-in-law.
5. The Board found that Mr. Purkey testified that the Property is unique because it is a corner lot.
6. The Board found that Mr. Purkey testified that a portion of the fence was removed but the fence is still too tall. The fence poses no visibility concerns.
7. The Board found that Mr. Purkey testified that the fence was located on the Property when the Property was purchased two years ago.
8. The Board found that Mr. Purkey testified that there are other porches in the neighborhood.
9. The Board found that Mr. Purkey testified that the porch is large enough to have a small seating area.
10. The Board found that Ms. King testified that there is approximately 25 feet from the edge of paving.
11. The Board found that Ms. King testified that the porch cannot be placed in the rear yard due to the septic system.
12. The Board found that Ms. King testified that she has received only compliments about the structures.
13. The Board found that no parties appeared in support of or in opposition to the Application.
14. 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 clearly unique as it is a corner lot with a septic system located near the middle of the building envelope. These conditions greatly limit the building envelope. Due to these limited conditions, there is little space on the Property for the Applicant to construct a reasonably sized porch. These unique physical conditions have created an unusual and limited building envelope for the Applicant and have created an exceptional practical difficulty for the Applicant. Furthermore, since the Property is a corner lot, the fence height restrictions restrict the height of the fence even though there is a significant distance from the nearby Blackstone Drive.
- b. Due to the uniqueness of the Property, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The unique shape of the Property and the two road frontages greatly limit the building envelope. The building envelope is further restricted due to the placement of the septic system. The Applicant seeks to retain a covered porch and a fence of a reasonable size but is unable to do so without violating the Sussex County Zoning Code. The fence has been in its present location for years and cannot be reduced in height. There is also no other location where the porch could reasonably be located so as to provide the Applicant with space to use the porch. The Board is convinced that the variances are necessary to enable the reasonable use of the Property as the variances will allow the porch and fence to remain on the Property. The Board is convinced that the shape and location of these structures are reasonable, which is confirmed when reviewing the survey provided by the Applicant.
- c. The exceptional practical difficulty was not created by the Applicant. The Property has an unusual shape and is further subject to building limitations due to the two road frontages. The Property is also limited by the location of a septic tank in the middle of the lot. These conditions have greatly constrained the building envelope on the Property and these unique physical conditions have created the exceptional practical difficulty for the Applicant. The Applicant also did not construct the fence. Rather, the fence was placed on the Property by a prior owner.
- 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. Due to the proximity of the edge of paving of Blackstone Drive and Topher Drive from the property lines, it is unlikely that the encroachments would be noticed. Furthermore, despite the fact that the fence has been on the Property for years and neighbors were notified of these variance requests, no complaints were noted in the record about the fence. Rather, the Board received a letter of support. 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 Applicant has demonstrated that the variances sought will allow the Applicant to retain the existing porch and fence. No additions or modifications to the structures are proposed. The Board also notes that the Applicant reduced the height of the fence as much as possible and the fence is only inches too tall.

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 December 18, 2018.