

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: MICHAEL L. WOOD & SUSAN E. WOOD

(Case No. 12222)

A hearing was held after due notice on November 5, 2018. The Board members present were: Mr. Dale Callaway, 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 an existing structure.

Findings of Fact

The Board found that the Applicants are seeking a variance of 8.9 feet from the front yard setback requirement of thirty (30) feet for an existing porch and steps. This application pertains to certain real property located on the east side of Foxwood Court, approximately 545 feet south of Pinewood Drive (911 Address: 15 Foxwood Court, Lewes); said property being identified as Sussex County Tax Map Parcel Number 2-34-11.00-384.00.

1. The Board was given copies of the Application, a notice of violation from Sussex County Planning & Zoning, a building permit application, a survey of the Property dated June 14, 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 Michael Wood was sworn in to give testimony. Richard Berl, Esquire, presented the Application on behalf of the Applicants and he submitted exhibit booklets to the Board.
4. The Board found that Mr. Berl stated that the Property is located in the Lockwood development, which is an older subdivision. The Applicants purchased the Property in 2000 and later installed a modular home. There was a septic system on the Property at the time and the septic system was located in the rear yard.
5. The Board found that Mr. Berl stated that, in 2017, the Applicants added decks, an outdoor shower, and a covered porch. The porch was added to the front of the house and replaced a small stoop. The porch provides protection from the elements and provides reasonable access to the home.
6. The Board found that Mr. Berl stated that the porch does not affect any sightlines from the street.
7. The Board found that Mr. Berl stated that the need for the variance was not created by the Applicants but by the contractor – Delaware Roofing and Gutter Pros, as the Applicants depended on the contractor to follow setbacks listed on the permit. The builder obtained the permits and never showed it to the Applicants and the Applicants only learned of the encroachment after they received the violation notice.
8. The Board found that Mr. Berl stated that the Property is unique because it is a small lot and the septic system takes up most of the back yard.
9. The Board found that Mr. Berl stated that the variance is necessary to enable reasonable use of the Property.
10. The Board found that Mr. Berl stated that the exceptional practical difficulty was not created by the Applicants.
11. The Board found that Mr. Berl stated that the variance will not affect the character of the neighborhood but improve it. According to Mr. Berl, there have been a number of variances granted in the neighborhood.

12. The Board found that Mr. Berl stated that the variance requested is the minimum variance necessary to afford relief.
13. The Board found that Mr. Wood affirmed the statements made by Mr. Berl as true and correct.
14. The Board found that Mr. Wood testified that there is about 15 feet between the front property line and the edge of pavement.
15. The Board found that no parties appeared in support of or in opposition to the Application.
16. 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 Applicants acquired the Property and its location limited the location where the home could be built. These conditions greatly limit the buildable area of the Property; particularly with regard to construction in the rear 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 covered porch and steps but are unable to do so 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 the existing covered porch and steps to remain on the Property. The Board is convinced that the shape and location of the existing covered porch and steps are reasonable, which is confirmed when reviewing the survey provided by the Applicants.
 - c. The exceptional practical difficulty was not created by the Applicants. There was no evidence that the Applicants created the lot or placed the septic system on the lot. Rather, those conditions predated the Applicants' ownership of the Property and have limited the building envelope. These conditions have created the exceptional practical difficulty for the Applicants who seeks to retain an existing covered porch and steps. The Board also notes that the Applicants relied on a licensed builder to construct the existing 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 Applicants.
 - 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 existing covered porch and steps will have no effect on the character of the neighborhood. There was no evidence of any impact on neighboring properties. Importantly, 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 Foxwood Court. 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 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 an existing covered porch and

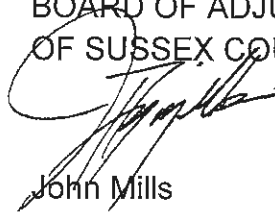
steps on the Property. No additions or modifications to those structures are proposed.

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. No Board Member voted against the Motion to approve the variance application. Ms. Ellen Magee did not participate in the discussion or vote on this 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 January 8, 2019