

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: DAVID R. YINGLING & MONA L. HANSFORD

(Case No. 12230)

A hearing was held after due notice on November 19, 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 existing and proposed structures.

Findings of Fact

The Board found that the Applicants are seeking a variance of 1.9 feet from the thirty (30) feet front yard setback requirement for an existing dwelling and a variance of 13.7 feet from the thirty (30) feet front yard setback requirement for a deck with a proposed addition. This application pertains to certain real property located on the south side of Loughlin Lane, approximately 481 feet east of Cedar Neck Road (911 Address: 112 Loughlin Lane, Ocean View); said property being identified as Sussex County Tax Map Parcel Number 1-34-5.00-291.00.

1. The Board was given copies of the Application, a survey of the Property dated August 22, 2018, pictures of the Property, 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 David Yingling was sworn in to testify about the Application. Susan Weidman, Esquire, was present on behalf of the Applicants, presented the Application, and submitted an exhibit booklet to Board members.
4. The Board found that Mrs. Weidman stated that the Property is adjacent to Loughlin Lane, which is a curved road.
5. The Board found that Mr. Yingling testified that the home was built in 1991 by his father. A building permit and certificate of occupancy were sought but the certificate of occupancy could not be located. The deck was later enclosed like a porch and faces the wetlands.
6. The Board found that Mr. Yingling testified that the deck measures approximately 6 feet by 10 feet and a certificate of compliance was issued for the deck in 1992.
7. The Board found that Mr. Yingling testified that he wants to sell the Property but a survey for a recent settlement showed the encroachments and the sale fell through. He seeks the variances for the existing structures and to add an addition to the current deck and to enclose it. He proposes to add 6 feet to the first floor deck.
8. The Board found that Mr. Yingling testified that the Property is unique due to the its irregular shape.
9. The Board found that Mr. Yingling testified that there is no neighbor to that side of the lot.
10. The Board found that Mr. Yingling testified that he did not create the situation as he received the Property from his father.
11. The Board found that Mr. Yingling testified that the Property could not otherwise be brought into compliance without moving the dwelling.
12. The Board found that Mr. Yingling testified that the variances will not alter the essential character as it has been in existence since 1991 and there are similar enclosed decks in the development which are similar to the proposed enclosed deck.

13. The Board found that Mr. Yingling testified that the variances would enhance the character of the neighborhood.
14. The Board found that Mr. Yingling testified that there is a significant distance from the edge of paving of Loughlin Lane and the front property line.
15. The Board found that Mr. Yingling testified that the variances are the minimum variance requests to afford relief.
16. The Board found that Mr. Yingling testified that the Property is served by a well and previously had a septic system.
17. The Board found that Mr. Yingling testified that he has received no complaints about the structures.
18. The Board found that Mr. Yingling testified that there are lot of mosquitoes.
19. The Board found that Al Okonski was sworn in to give testimony in support of the Application and submitted an exhibit to the Board. Mr. Okonski lives next door to the site and he requests that conditions be placed on the deck addition.
20. The Board found that two (2) people appeared in support of and no one appeared in opposition to the Application.
21. 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 its unique shape and proximity to wetlands. The Property is adjacent to Loughlin Lane, which is a road that curves near the Property. As a result of the curve, the Property has a long but unusually shaped front property line. This unique condition leaves an oddly shaped and limited building envelope. The Board notes that the Property was also previously improved by a septic system which likely further reduced the size of the building envelope when the house was constructed. Ultimately, these conditions greatly limited the buildable area of the Property and 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 dwelling and to build an addition to an existing deck 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 Applicants to retain an existing dwelling and to build an addition to an existing deck on the Property. The Board is convinced that the shape and location of the structures are reasonable, which is confirmed when reviewing the survey provided by the Applicants. The Board notes that there is no other reasonable location where the addition could be constructed. The Property is also located near wetlands and mosquitoes are often present so a covered deck is necessary for the Applicants to enjoy the outdoor space.
 - c. The exceptional practical difficulty was not created by the Applicants. The Property has unique physical conditions due to the Property's unique shape and limited building envelope. It is clear that the Applicants did not create the unique physical conditions of the Property. These conditions have created the exceptional practical difficulty for the Applicants who seek to retain an existing dwelling and to build an addition to an existing deck. The Applicants also did not construct the dwelling or deck as those structures were 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. The Board is convinced that the dwelling and proposed addition will have no effect on the character of the neighborhood. The dwelling and deck have been on the Property for many years without complaints noted in the record. The proposed addition to the deck will be similar to other decks in the neighborhood. No evidence was presented that the variances would somehow alter the essential character of the neighborhood. The Board also notes that the testimony and record demonstrate that there is a significant distance between the edge of paving of Loughlin Lane and the front property line so the encroachments are likely not noticeable without a survey.

- 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 dwelling and to build an addition to an existing deck on the Property.
- f. The variance approval for the deck and addition is subject to the following conditions:
 - i. The deck and addition are limited to one-story and the exterior of the addition is limited to a height of 15 feet above the floor level of the existing deck.
 - ii. The roof pitch of the deck's addition must be a 4/12 roof pitch.
 - iii. No deck is permitted on top of the roof.

The Board granted the variance application with conditions 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 with conditions. 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 with conditions. 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 29, 2019.