

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: VICTOR YOKIMCUS & DEANA YOKIMCUS

(Case No. 12248)

A hearing was held after due notice on January 7, 2019. 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 rear yard setback requirement for an existing structure.

Findings of Fact

The Board found that the Applicants are seeking a variance of 5 feet from the fifteen (15) feet rear yard setback requirement for an existing screen porch and a variance of 4.7 feet from the fifteen (15) feet rear yard setback requirement for an existing screen porch. The structure will be located on the south side of the lot. This application pertains to certain real property located on the southeast corner of Woodland Circle and Ashwood Court in the Angola by the Bay subdivision (911 Address: 32822 Ashwood Court, Lewes); said property being identified as Sussex County Tax Map Parcel Number 2-34-11.20-321.00.

1. The Board was given copies of the Application, a survey of the Property dated August 18, 2016, a survey of the Property dated November 6, 2018, a building permit application, 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 Victor Yokimcus and Deana Yokimcus were sworn in to testify about the Application.
4. The Board found that Mr. Yokimcus testified that the Property is a small corner lot and the house takes up most of the building envelope.
5. The Board found that Mr. Yokimcus testified that the Applicants retained a contractor to add a small screen porch to the rear of the house. The builder obtained the permit and constructed porch. According to Mrs. Yokimcus, the Applicants learned of the encroachment after the porch was complete. The Applicants also consulted with their homeowners association prior to construction and were told that no variance was necessary.
6. The Board found that Mr. Yokimcus testified that mosquitoes and flies are a problem on the Property and that the porch affords the Applicants with an opportunity to reasonably use their outdoor space.
7. The Board found that Mr. Yokimcus testified that the porch matches the house and that there are similar porches in the neighborhood. He believes that this porch fits with the aesthetics of the neighborhood.
8. The Board found that Mr. Yokimcus testified that there was no other place on the Property to build a screen porch.
9. The Board found that Mr. Yokimcus testified that the exceptional practical difficulty was not caused by the Applicants as they depended on the contractor to follow setback requirements.
10. The Board found that Mr. Yokimcus testified that the variances will not alter the essential character of the neighborhood as the porch matches the style of the house.
11. The Board found that Mr. Yokimcus testified that the variances requested are the minimum variances to allow a screen porch to enjoy outdoor living without dealing with insects.

12. The Board found that Mr. Yokimcus testified that he maintains approximately ½ of the common area to the rear and the homeowners association maintains the other half.
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 unique as it is an undersized corner lot. The lot consists of only 6,086 square feet as is clearly shown on the survey. The lot's unique conditions limit the buildable area available to the Applicants and have created an exceptional practical difficulty for the Applicants who seek to retain a screen porch on the lot. The situation is also unique as mosquitoes are a problem and make it difficult for the Applicants to effectively use outdoor space. The screen porch affords them with functional outdoor space.
 - b. Due to the uniqueness of the lot, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property has a unique size and the buildable area thereof is limited due to the size of the lot. The building envelope is further limited since the Property is a corner lot. The Applicants seek to retain a porch 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 reasonably sized porch to be retained on the Property. The Board is convinced that the shape and location of the porch are also reasonable, which is confirmed when reviewing the survey provided by the Applicants. The Board also notes that the porch is necessary for the reasonable use of the Property due to the mosquito problem on the site.
 - c. The exceptional practical difficulty was not created by the Applicants. The Applicants did not create the unusual size of the Property or create the mosquito problem. The unique size of the Property is clear when reviewing the survey. The Board is convinced that the exceptional practical difficulty was not created by the Applicants but was created by the lot's unique characteristics. The Applicants also relied on their builder to construct the porch in compliance with the Code only to later discover the encroachment.
 - 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 porch will have no effect on the character of the neighborhood. The porch is located to the rear of the Property near common area owned by the homeowners association and it is clear from the testimony that half of the common area is maintained by the Applicant. As such, the encroachment is likely unnoticeable without a survey. There was no evidence that the location of the porch in the rear yard setback area would somehow affect the neighborhood and no evidence was presented that the variance would somehow alter the essential character of the neighborhood. The Board also notes that the porch was designed to match the dwelling.
 - 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

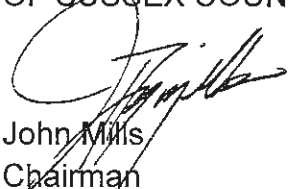
variance sought will allow the Applicants to retain a reasonably sized porch on the Property. No additions or modifications to the porch are proposed.

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, 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 March 5, 2019