

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: MICHAEL GROSSCUP & ALEXIS GROSSCUP

(Case No. 12257)

A hearing was held after due notice on January 28, 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 a variance from the rear yard setback requirement for a proposed structure.

Findings of Fact

The Board found that the Applicants are seeking a variance of 3.0 feet from the ten (10) feet rear yard setback requirement for a covered porch. This application pertains to certain real property located on the north side of Silver Fox Drive approximately 194 feet west of Fox Hall Road in the Fox Haven Subdivision (911 Address: 33531 Silver Fox Drive, Frankford); said property being identified as Sussex County Tax Map Parcel Number 5-33-11.00-532.00.

1. The Board was given copies of the Application, a drawing of the dwelling, an original site plan of the Property, a survey of the Property dated March 2, 2018, an undated survey 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 or in opposition to the Application.
3. The Board found that Michael Grosscup was sworn in to testify about the Application.
4. The Board found that Mr. Grosscup testified that he intends to construct a covered porch to the rear of his home. He recently purchased the home from Ryan Homes and was told he could build a covered porch. He did not want Ryan Homes to construct the porch and planned to add the porch later.
5. The Board found that Mr. Grosscup testified that the initial proposed placement of the home would have allowed the covered porch to be built without a variance but the home was placed in a different location on the lot making a variance necessary. Initially, the home was to be located 10.2 feet from the south side property line. The home was actually constructed, however, 14 feet from the south side property line. Since the home's location was moved, Mr. Grosscup cannot build the porch within the building envelope.
6. The Board found that Mr. Grosscup testified that the lot is unique because it is pie-shaped and there are non-tidal wetlands to the rear.
7. The Board found that Mr. Grosscup testified that that the Property cannot otherwise be developed without a variance.
8. The Board found that Mr. Grosscup testified that there are houses on either side so this is the only practical location for the covered porch.
9. The Board found that Mr. Grosscup testified that the need for the variance was not created by the Applicant but by Ryan Homes due to the placement of the home. Ryan Homes moved the house over 4 feet and has admitted its error to the Applicants.
10. The Board found that Mr. Grosscup testified that the variance will not alter the character of the neighborhood as there are a number of covered porches on other homes.
11. The Board found that Mr. Grosscup testified that the porch will measure 10 feet by 12 feet and will be a covered porch. The steps will fit within the building envelope.

12. The Board found that Mr. Grosscup testified that the variance requested is the minimum variance necessary to afford relief.
13. The Board found that Mr. Grosscup testified that the porch has to be located in this location due to the orientation of the dwelling and location of sliders. The porch will be located off the kitchen.
14. The Board found that one (1) party appeared in support of the Application and no parties 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 unrebutted, 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 its odd shape, which is clear from the survey. The rear of the Property is particularly oddly shape and renders a significant portion of the rear yard unbuildable. These conditions have created an oddly shaped building envelope. The situation is also unique because the Applicants' builder located the dwelling in a different location than originally planned and the new location of the house makes it impossible for the Applicants to construct a porch within the building envelope while affording access to the home through existing sliding glass doors. The Board finds that the lot's unique conditions and this unique situation have created an exceptional practical difficulty for the Applicants who seek to construct a covered porch on the lot.
 - b. Due to the uniqueness of the lot and the situation, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property has a unique and limited buildable area. The Applicants seek to construct a reasonably sized covered porch 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 reasonably covered porch to be constructed 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.
 - c. The exceptional practical difficulty was not created by the Applicants. The Applicants did not create the unusual building envelope of the Property and the unusual building envelope has created the exceptional practical difficulty. The unique characteristics of the Property are 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 Board also notes that the Applicant's builder placed the dwelling nearly 4 feet farther from the south side property line than originally proposed and the relocation of the dwelling restricted the possible location of the porch.
 - 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 porch will have no effect on the character of the neighborhood. The porch will be located to the rear of the Property but only a corner of the porch will encroach into the setback area. 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.
 - e. The variance sought is the minimum variance necessary to afford relief and the variance requested represent the least modification possible of the

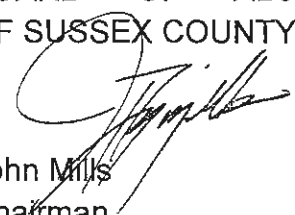
regulation at issue. The Applicants have demonstrated that the variance sought will allow the Applicants to construct a reasonably sized porch on the Property. The Board notes that only a portion of the porch will encroach into the setback area and that the Applicants are constructing steps to the porch which will comply with the setback requirements.

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