

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: EUGENE HANSEN & TERRY HANSEN

(Case No. 12279)

A hearing was held after due notice on March 4, 2019. The Board members present were: Mr. Dale Callaway, Ms. Ellen Magee, Mr. John Williamson, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for a variance from the side 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 side yard setback requirement on the northeast side for a proposed porch. This application pertains to certain real property located on the southeast side of W. Haven Wood Drive approximately 189 feet north of Silver Fox Drive within the Fox Haven subdivision (911 Address: 32353 West Haven Wood Drive, Frankford) said property being identified as Sussex County Tax Map Parcel Number 5-33-11.00-537.00.

1. The Board was given copies of the Application, a survey of the Property dated October 4, 2017, a survey of the Property with the proposed porch shown, photographs of the Property, pictures, 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 Eugene Hansen was sworn in to testify about the Application.
4. The Board found that Mr. Hansen testified that he wishes to build a screened porch onto his home. The home was built in October 2017 by Ryan Homes and the salesperson indicated that a porch could be added at a later date.
5. The Board found that Mr. Hansen testified that the Property has is unique as it is a pie-shaped lot measuring approximately 97 feet wide at the front and 25 feet wide in the rear.
6. The Board found that Mr. Hansen testified that this location is the only place where a screened porch could be placed as there are sliding doors on the home that would open onto the porch. The location of the chimney to the home also limits the placement options for the porch. The Applicants will, however, be able to place steps to the porch within the building envelope.
7. The Board found that Mr. Hansen testified that the Property cannot otherwise be developed and that the exceptional practical difficulty was not created by the Applicants.
8. The Board found that Mr. Hansen testified that the builder relied on incorrect property stakes when determining the setback areas. This discrepancy has significantly reduced the building envelope for the lot.
9. The Board found that Mr. Hansen testified that the variance will not alter the character of the neighborhood as there are many covered porches in the subdivision.
10. The Board found that Mr. Hansen testified that the variance requested is the minimum variance requested to afford relief.
11. The Board found that Mr. Hansen testified that the neighbor on the northeast side has no objection to the request.
12. The Board found that Mr. Hansen testified that there are wetlands to the rear of the lot.

13. The Board found that no one 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 a pie-shaped lot with an exceptionally narrow rear yard. As per the survey, the rear yard measures only 25.15 feet wide. The angle along the northeast side property line is especially sharp and makes development along that side of the Property challenging. This unique shape and width of the rear yard renders much of the rear yard unbuildable and pushed the home towards the front of the Property. As a result of the Property's unique conditions, the building envelope of the rear and side yard along the northeast corner of the Property is quite limited. These unique physical conditions have created an exceptional practical difficulty for the Applicants who seek to add a reasonable porch to the rear of the home off a room which has sliding glass doors.
 - 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 construct a reasonably sized porch to the rear of the home 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 a reasonably sized 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. The proposed location of the porch will also allow the Applicants to construct an access from the home to the porch. The porch will afford the Applicants with usable outdoor space; which may be necessary since the Property is adjacent to wetlands.
 - c. The exceptional practical difficulty was not created by the Applicants. There was no evidence that the Applicants created the unique shape of the Property. Rather, the Applicants only recently acquired the Property. These unique conditions have created an unusually shaped and limited building envelope which is further limited by the placement of the existing house. These conditions have created the exceptional practical difficulty for the Applicants who seek to construct a reasonably sized porch on the lot. The Board notes that the builder made a mistake in identifying the property stakes and the Applicants learned that the Property is narrower in the rear yard than previously believed.
 - 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 un rebutted evidence confirms that there are other porches in the neighborhood. Furthermore, no evidence was presented which would indicate that the variance would somehow alter the essential character of the neighborhood or be detrimental to the public welfare. Notably, the neighbor most affected by the porch did not appear in opposition to the request. The Board also notes that only a corner of the porch will encroach into the setback area so the impact on the neighboring property to the northeast should be minimal.
 - e. The variance sought is the minimum variance necessary to afford relief and the variance requested represents the least modification possible of the

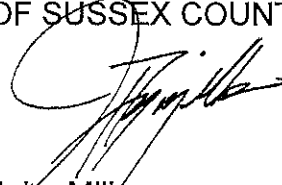
regulation at issue. The Applicants have demonstrated that the variance sought will allow the Applicants to place a reasonably sized porch on the Property. The porch will be placed near existing sliding glass doors to allow a safe access to the dwelling. The Board is convinced that the Applicants have limited the size and location of the porch to minimize the need for the variance. Furthermore, the Applicants have designed the porch so that the steps accessing the porch will be constructed within the building envelope.

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. John Williamson, and Mr. Brent Workman. No Board Member voted against the Motion to approve the variance application. Mr. John Mills 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 April 2, 2019.