

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: BRIAN CASCIO & DOLORES CASCIO

(Case No. 12284)

A hearing was held after due notice on March 18, 2019. The Board members present were: Mr. Dale Callaway, Ms. Ellen Magee, Mr. John Mills, Mr. John Williamson, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for variances from the rear yard setback requirement for a proposed structure.

Findings of Fact

The Board found that the Applicants are requesting a variance of 5.9 feet from the ten (10) feet rear yard setback requirement for a proposed screen porch and a variance of 6.5 feet from the ten (10) feet rear yard setback requirement for a proposed screen porch. This application pertains to certain real property located on the southwest side of Sunflower Boulevard approximately 439 feet west of Moonbeam Way within the Americana Bayside Phase 8 Subdivision (911 Address: 36308 Sunflower Boulevard Selbyville); said property being identified as Sussex County Tax Map Parcel Number 5-33-19.00-1117.00.

1. The Board was given copies of the Application, a survey of the Property dated September 23, 2018, photographs, 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 Brian Cascio and Dolores Cascio were sworn in to testify about the Application.
4. The Board found that Mrs. Cascio testified that the Applicants purchased the home in Americana Bayside in 2006 and, at that time, they decided not to add a porch or deck as it was too costly.
5. The Board found that Mrs. Cascio testified that the HOA has not given permission because of the size of the lot.
6. The Board found that Mrs. Cascio testified that the Applicants want a screen porch because they back up to a storm water pond and they want to enjoy the outdoors without the annoyance of bugs.
7. The Board found that Mrs. Cascio testified that the Property is unique because of the lot size.
8. The Board found that Mrs. Cascio testified that it is a duplex lot zoned MR-RPC which backs up to the water.
9. The Board found that Mr. Cascio testified that there is 38 feet from the dwelling to the pond.
10. The Board found that Mr. Cascio testified that, if they were to build the porch to within County Code, it could only be 6 feet deep. His builder recommends a porch at least 12 feet deep, which is the depth of the proposed porch.
11. The Board found that Mr. Cascio testified that the HOA will have to approve the porch.
12. The Board found that Mr. Cascio testified that the porch would not alter the essential character of the neighborhood as there are many other screened porches within the development.
13. The Board found that Mr. Cascio testified that most lots have a porch and some porches are 20 feet deep.

14. The Board found that Mr. Cascio testified that, if this variance request is approved, there will still be 26 feet to the pond.
15. The Board found that Mr. Cascio testified that the variance will not impact the neighborhood and that the neighbor on the other side of the duplex has no objection.
16. The Board found that Mrs. Cascio testified that the neighbor on the south is concerned that he will lose some of his view of the pond.
17. The Board found that Mrs. Cascio testified that there is nowhere else on the Property to put a screened in porch.
18. The Board found that Mrs. Cascio testified that this practical difficulty was not caused by the Applicants and the porch will not alter the essential character of the neighborhood as there are other screened porches in the community.
19. The Board found that Henry Chmura was sworn in to give testimony in opposition to the Application.
20. The Board found that Mr. Chmura testified that he owns the home to the south of the Applicant and he paid for a premium for his lot. He is concerned that, by losing some of the view, it will affect the value of his investment.
21. The Board found that Mr. Chmura testified that he is not aware of any screen porches that encroach into setbacks in his neighborhood.
22. The Board found that no one appeared in support of and one person appeared in opposition to the Application.
23. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, which the Board weighed and considered, the Board determined that the application failed to meet the standards for granting a variance. The findings below further support the Board's decision to deny the Application.
 - a. The Board was not convinced that there was some unique physical condition related to the Property which has created an exceptional practical difficulty. The Property is a lot of a similar size to the neighboring lot and the Applicants knew or should have known the size of the lot and its building envelope when they acquired the Property. The Applicants decided to build the home in 2006 but chose not to add a porch at that time. No evidence was presented demonstrating that the Property has some unique, natural feature which has created an exceptional practical difficulty for the Applicants. The survey shows that there is adequate space to build the porch, albeit a smaller porch, without a variance. Conversely, the difficulty, if any, appears to be entirely self-created by the Applicants' desire to exceed the setback requirements set forth in the Sussex County Zoning Code by placing the porch in the setback area rather than in the building envelope.
 - b. The Applicants failed to prove that the porch could not be built in strict conformity with the Sussex County Zoning Code. The Property is a duplex and the Applicants have testified that a smaller porch could be constructed in compliance with the Code. While a smaller porch may not be the size porch the Applicants want, the Applicants did not convince the Board that a smaller porch could not suit their needs or that a larger porch was necessary to enable reasonable use of the Property. The Board also notes that the Applicants referred to the porch on the neighboring duplex and on other lots in the neighborhood. The survey presented by the Applicants, however, clearly demonstrates that the porch on the neighboring duplex unit complies with the setback requirements. The neighboring porch appears to be recessed into the home. The Applicants provided no evidence that porches on other properties in the neighborhood encroached into the rear yard setback area. For these reasons, the Board finds that the Property could

be developed in strict conformity with the Code and that the variances are not necessary to enable reasonable use of the Property.

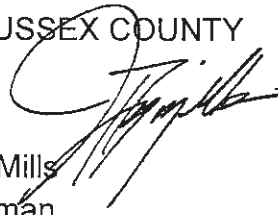
- c. The Board finds that the Applicants are creating their own exceptional practical difficulty by proposing to a construct a porch which does not fit within the building envelope. The Applicants' decision to construct a porch in this location is the reason for the need for a variance and has nothing to do with the size, shape, or condition of the Property. There is no unusual condition to the Property which has created this difficulty. The lot appears to be similar in size and shape to the neighboring lot and the Applicants presented no evidence that their lot was different than other lots in the neighborhood. As such, the Board was not convinced that the variance request was the product of a *need*. Instead, the variance request appears to be the product of a *want* as the Applicants seek to build the porch as proposed for purposes of convenience, profit, and / or caprice. Since the Applicants can build a porch that can comply the Sussex County Zoning Code, the need for the variance is something created by the Applicants' wants rather than an unusual physical condition relating to the Property. The Applicants have thus created their own exceptional practical difficulty.
- d. The Applicants have failed to convince the Board that the porch would not alter the essential character of the neighborhood. While the Applicants have introduced evidence that other porches exist, the Applicants have not demonstrated that other porches encroach into the setback area. The Board has concerns that approval of this request would lead to additional requests for similar relief in the neighborhood and could jeopardize the character of the neighborhood.
- e. Since the variance is not necessary to enable the reasonable use of the Property, the Board also finds that the variance requested is not the minimum variance necessary to afford relief. Furthermore, the Board finds that no variance is necessary to afford relief since there is space to build a reasonably sized porch on the Property in compliance with the Sussex County Zoning Code.

The Board denied the variance application finding that it failed to meet the standards for granting a variance.

Decision of the Board

Upon motion duly made and seconded, the variance application was denied. The Board Members in favor of the Motion to Deny were Mr. Dale Callaway, Ms. Ellen Magee, Mr. John Mills, Mr. John Williamson, and Mr. Brent Workman. No Board Member voted against the Motion to deny 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 April 16, 2019.