

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: HELEN R. GRANT

(Case No. 12298)

A hearing was held after due notice on May 6, 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 requirements in a multi-family dwelling for proposed structures and from the minimum aggregate yard requirement for a townhome.

Findings of Fact

The Board found that the Applicant is requesting a variance of 4 feet from the twenty (20) feet rear yard setback requirement for a proposed screened porch, a variance of 4.1 feet from the minimum aggregate yard size requirement of forty (40) feet, and a variance of 6 feet from the twenty (20) feet rear yard setback requirement for a proposed set of steps. The application pertains to certain real property located on the north side of Cormorant Way approximately 216 feet northwest of Grebe Lane in the Bay Forest Club subdivision (911 Address: 20992 Cormorant Way, Ocean View); said property being identified as Sussex County Tax Map Parcel Number 1-34-8.00-1206.00.

1. The Board was given copies of the Application, a survey of the Property dated April 30, 2018, a site plan of the Property dated December 8, 2017, pictures, drawings, 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 Helen Grant was sworn in to testify about the Application. Ms. Grant submitted architectural drawings of the proposed porch.
4. The Board found that Ms. Grant testified that the Property is unique because it is a shallow lot.
5. The Board found that Ms. Grant testified that she cannot build the porch to the wall of the adjoining unit because homeowner association rules require a gap between those structures for maintenance.
6. The Board found that Ms. Grant testified that her unit is an end unit and it cannot otherwise be developed to add a screened porch without a variance as there is only 8 feet of buildable space. She has consulted with a builder and was recommended that the minimum size of the porch is 12 feet.
7. The Board found that Ms. Grant testified that the variance is needed to allow for usable space on the porch so that she can have an area for tables and chairs.
8. The Board found that Ms. Grant testified that the need for the variances was not created by the Applicant but by the misrepresentation from the sales agent for NV Homes who led the Applicant to believe that her lot was larger than it is. Ms. Grant was told she could build 18 feet out from the porch.
9. The Board found that Ms. Grant testified that neighbors have larger porches.
10. The Board found that Ms. Grant testified that the variances will not alter the essential character of the neighborhood as the porch will be built to match the home and other screened porches in the area.
11. The Board found that Ms. Grant testified that there is 100 feet of woods to the rear of the unit.

12. The Board found that Ms. Grant testified that the variances requested are the minimum variances necessary to allow the Applicants to place a table and chairs comfortably on the porch.
13. The Board found that Ms. Grant testified that the steps will project into the rear yard as well.
14. The Board found that Gerald Schaffer, who is the Applicant's builder, was sworn in to give testimony about the Application. He testified that a 10 inch minimum step would be needed for the porch. Ms. Grant believes that 1 or, at most 2 steps would be needed to access the porch.
15. The Board found that Ms. Grant testified that she cannot sit outside due to bug problems.
16. The Board found that no one appeared in support of or in opposition to the Application
17. 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 small lot and has bug problems when using the outdoor space. The dwelling was placed on the lot by the homebuilder and the Applicant was led to believe that a porch could be added to the home without encroaching into the setback area. Due to the small size of the lot, however, the Applicant learned that a reasonably sized porch would not fit on the lot. The lot's unique conditions limit the buildable area available to the Applicant and have created an exceptional practical difficulty for the Applicant who seeks to construct a screen porch and steps on the lot. The situation is also unique as mosquitoes are a problem and make it difficult for the Applicant to effectively use outdoor space. The screen porch affords her 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 Applicant seeks to construct a screen porch and steps but is 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 and steps to be constructed on the Property. The Board is convinced that the shape and location of the porch and steps are also reasonable, which is confirmed when reviewing the survey provided by the Applicant. 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 Applicant 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 Applicant also did not place the home on the lot. The Board is convinced that the exceptional practical difficulty was not created by the Applicant but was created by the lot's unique characteristics.
 - 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 and steps will have no effect on the character of the neighborhood. The porch and steps will be located to the rear of the Property near common area owned by the homeowners association. As such, the encroachment is likely unnoticeable without a survey. There was no evidence that the location of the porch or steps in the rear yard setback

area would somehow affect the neighborhood and no evidence was presented that the variances would somehow alter the essential character of the neighborhood. The Board also notes that the porch is designed to match the dwelling.

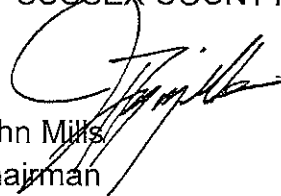
- e. The variances sought are the minimum variances necessary to afford relief and the variances requested represent the least modifications possible of the regulations at issue. The Applicant has demonstrated that the variances sought will allow the Applicant to construct a screen porch and steps on the Property. The porch is the minimum size necessary to allow for reasonable use of the space and the steps are limited in number and thereby reduce the rear yard encroachment.

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 of the Motion to approve 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 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 June 18, 2019.