

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: ARIEL GONZALEZ

(Case No. 12337)

A hearing was held after due notice on December 2, 2019. The Board members present were: Dr. Kevin Carson, Mr. Jeff Chorman, Ms. Ellen Magee, Mr. John Williamson, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for variances the front yard setback and side yard setback requirements for proposed and existing structures.

Findings of Fact

The Board found that the Applicant is requesting a variance of 9 feet from the fifteen (15) feet side yard setback requirement on the east side for an existing porch. This application pertains to certain real property that is a landlocked parcel on the northside of Saw Mill Road approximately 0.47 miles from Pine Road (911 Address: 20116 Saw Mill Road Georgetown) said property being identified as Sussex County Tax Map Parcel Number 1-35-4.00-11.01. After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a survey of the property dated May 23, 2019, an aerial photograph of the property, property record information, 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 Ariel Gonzalez and Paul Tennell were sworn in to give testimony about the Application.
4. The Board found that Mr. Tennell testified that the home is unique due to the size of the lot and the location of the septic tank.
5. The Board found that Mr. Tennell testified that there is no other location to place the covered porch because the entrance to the dwelling is on the east side of the property.
6. The Board found that Mr. Tennell testified that there is exceptional practical difficulty because the situation was not created by the owner. The property was purchased with the non-conforming dwelling in the current location.
7. The Board found that Mr. Tennell testified that the variance will not alter the essential character of the neighborhood and that the lot to the east is vacant and is owned by the Applicant.
8. The Board found that Mr. Tennell testified that the variance requested is the minimum variance necessary to afford relief.
9. The Board found that Mr. Gonzalez testified that he did not understand the setbacks as noted on the permit when the porch was built.
10. The Board found that Paul Reiger was sworn in and testified against the Application because he thought that the setbacks were supposed to be checked when the footings were inspected to avoid the need for this type of variance request. The porch, however, was built prior to the new inspection procedures.
11. The Board tabled the Application until December 16, 2019, at which time the Board discussed and voted on the Application.
12. 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 met the standards for granting a

variance. The findings below further support the Board's decision to approve the Application.

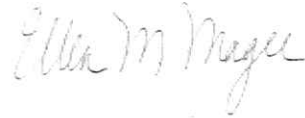
- a. The Property is unique as it is a smaller lot consisting of 11,856 square feet. The Property is also unique because it is serviced by an easement and has a unique building envelope due to this easement. The dwelling was constructed in the setback by a prior owner but its non-conformity is grandfathered. The Applicant purchased the Property with the dwelling in its current location and sought to make a reasonable addition thereto. The Property is further restricted by a septic tank on the Property. The unique conditions limit the buildable area available to the Applicant who seeks to retain an existing porch on the lot. The porch is needed to provide cover to the entrance of the Property. The exceptional practical difficulty and unnecessary hardship were created by the Property's unique conditions.
- b. The unnecessary hardship and exceptional practical difficulty are not being created by the provisions of the Sussex County Zoning Code.
- c. Due to uniqueness of the lot, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property has unique physical characteristics and the buildable area thereof is limited due to those characteristics. The Applicant seeks to retain an existing porch on the lot but is 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 remain 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 Applicant.
- d. The unnecessary hardship and exceptional practical difficulty were not created by the Applicant. The Applicant did not create the unusual size of the Property, place the home on the lot, or install the septic tank. The unique size of the Property is clear when reviewing the survey. The Board is convinced that the unnecessary hardship and exceptional practical difficulty were not created by the Applicant but was created by the lot's unique characteristics.
- e. 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. There is no evidence that the location of the porch in the side 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 or be detrimental to the public welfare. There are few residential properties in the area and Applicant owns the adjacent property which is most affected by the encroachment.
- f. 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 Applicant has demonstrated that the variance sought will allow him to retain a porch on the Property. No additions or modifications to the porch are proposed.
- g. The condition or situation of the Property and the intended use of the Property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the Sussex County Zoning Code.

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. Jeffrey Chorman, Mr. Brent Workman and Mr. John Williamson. Dr. Kevin Carson and Ms. Ellen Magee voted against the Motion to approve the variance application.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY



Ellen M. Magee
Chair

If the use is not established within two (2) years from the date below the application becomes void.

Date February 18, 2020