

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: MATTHEW PYZIK & REGINA PYZIK

(Case No. 12434)

A hearing was held after due notice on June 15, 2020. The Board members present were: Dr. Kevin Carson, Mr. Jeff Chorman, Ms. Ellen Magee, and Mr. John Williamson.

Nature of the Proceedings

This is an application for variances from the rear yard setback requirement and from the aggregate of the front yard and rear yard setbacks for proposed structures.

Findings of Fact

The Board found that the Applicants are requesting a variance of 5.7 feet from the twenty (20) feet rear yard setback requirement and a variance of 5.7 feet from the forty (40) feet aggregate yard requirement for a proposed three-season room. The application pertains to certain real property located on the north side of Cormorant Way within the Bay Forest Club subdivision (911 Address: 21036 Cormorant Way, Ocean View); said property being identified as Sussex County Tax Map Parcel Number 1-34-8.00-1195.00. 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 February 19, 2020, pictures, letters of support, floor plans and drawings for the proposed addition, 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 two letters in support of and no correspondence in opposition to the Application.
3. The Board found that William Blatzheim, Matthew Pyzik, and Regina Pyzik were sworn in to testify about the Application.
4. The Board found that Mr. Blatzheim testified that the Applicants seek these variances for a proposed three-season room to the rear of their townhouse.
5. The Board found that Mr. Blatzheim testified that there are four units per townhouse building and this unit is longer than other units within this building as this townhouse is 72.6 feet deep and neighboring units are 64.6 feet deep.
6. The Board found that Mr. Blatzheim testified that this townhouse is the only home without a screened porch or three-season room and that neighboring units had their porches constructed when the townhouse was built.
7. The Board found that Mr. Blatzheim testified that the Applicants explored a smaller porch but there is no way to construct a viable porch without the variance.
8. The Board found that Mr. Blatzheim testified that the exceptional practical difficulty was not created by the Applicants but by the incorrect information provided by the sales consultants who told the Applicants that the rear yard setback was 10 feet rather than 20 feet. Mr. Blatzheim believes that there was some confusion because other lots in the neighborhood have 10 foot rear yard setbacks.
9. The Board found that Mr. Blatzheim testified that granting this Application will not alter the essential character of the neighborhood as all the other units have screened porches.
10. The Board found that Mr. Blatzheim testified that the variances requested are the minimum variances to provide an adequate space for the family to enjoy the use of

a three-season room and the variances will not affect the utility and drainage easement.

11. The Board found that Mr. Blatzheim testified that the Property cannot otherwise be developed with a three-season room.
12. The Board found that Mr. Blatzheim testified that bugs are a problem in the rear yard after heavy rains and the Applicants cannot sit outside due to the bug problem.
13. The Board found that Mr. Blatzheim testified that the property adjacent to the rear of the Property is secluded and buffers lands of other ownership.
14. The Board found that Mr. Blatzheim testified that the homeowners association will not approve the Application until a variance has been given by the County.
15. The Board found that Mr. Blatzheim testified that a similar variance was approved in 2019 for a nearby property on Cormorant Way (Case No. 12298).
16. The Board found that Mr. Blatzheim testified that neighbors to the west support the Application.
17. The Board found that Mr. Blatzheim testified that there will be no steps off the rear of the addition as the steps will go to the east side towards the patio within the building envelope.
18. The Board found that Mr. Blatzheim testified that the Applicants' bedroom window is to the rear of the house and they did not want to cover the windows with a roof structure.
19. The Board found that Mr. Blatzheim testified that porches are popular in the neighborhood.
20. The Board found that Mr. Pyzik testified the sales representative told the Applicants that the rear yard setback was 10 feet.
21. The Board found that no one appeared in support of or opposition to the Application.
22. 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 Applicants were led to believe that the rear yard setback area was only 10 feet rather than 20 feet. Due to the small size of the lot, however, the Applicants later learned that a reasonably sized porch would not fit on the lot. The lot's unique conditions limit the buildable area available to the Applicants and have created an unnecessary hardship and exceptional practical difficulty for the Applicants who seek to construct a three-season room on the lot. The situation is also unique as mosquitoes are a problem and make it difficult for the Applicants to effectively use outdoor space; particularly after heavy rains. The screen porch affords them with functional outdoor space.
 - b. The unnecessary hardship and exceptional practical difficulty are not being created by the provisions of the Sussex County Zoning Code.
 - c. 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 Applicants seek to construct a three-season room but are 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 three-season room to be constructed on the Property. The Board is convinced that the shape and location of the three-season room is also reasonable, which is confirmed when reviewing the survey provided by the Applicants. The

Board also notes that the three-season room is necessary for the reasonable use of the Property due to the mosquito problem on the site.

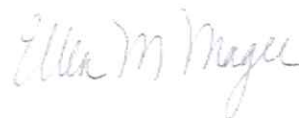
- d. The unnecessary hardship and exceptional practical difficulty were not created by the Applicants. The Applicants did not create the unusual size of the Property or create the mosquito problem. The unique size of the Property is clear when reviewing the survey. The Applicants also did not place the home on the lot. The Board is convinced that the unnecessary hardship and exceptional practical difficulty were not created by the Applicants but were created by the lot's unique characteristics. The Board also notes that the Applicant was misled by the sales associate.
- e. 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 three-season room will have no effect on the character of the neighborhood. There are other porches in the neighborhood. The three-season room 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 three-season room 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. Neighbors have indicated support for the Application and the Applicants will still have to obtain approval from the homeowners association.
- f. 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 Applicants have demonstrated that the variances sought will allow the Applicants to construct a three-season room on the Property. The three-season room is the minimum size necessary to allow for reasonable use of the space and the steps have been turned to the side and are located within the building envelope to reduce the rear yard encroachment.
- 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 Dr. Kevin Carson, Mr. Jeffrey Chorman, Ms. Ellen Magee, and Mr. John Williamson. No Board Member voted against the Motion to approve the variance application. Mr. Brent Workman did not participate in the discussion or vote on this 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 August 4, 2020.