

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: GEORGE E. KEHM & LUCILLE J. KEHM

(Case No. 12496)

A hearing was held after due notice on November 16, 2020. 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 a variance from the rear yard setback requirement for a proposed structure.

Findings of Fact

The Board found that the Applicants are requesting a variance of 2 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 west side of Bayberry Court within the Marina at Peppers Creek Subdivision (911 Address: 33276 Bayberry Court, Dagsboro) said property being identified as Sussex County Tax Map Parcel Number 2-33-7.00-277.00. After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, letters of support, photographs, an aerial photograph of the Property, a survey of the Property dated June 25, 2015, 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 the Application and no correspondence in opposition to the Application.
3. The Board found that George Kehm and Lucille Kehm were sworn in to testify about the Application.
4. The Board found that Ms. Kehm testified that the Applicants seek the variance to build an 8 ft. by 12 ft. screen porch.
5. The Board found that Ms. Kehm testified that, when the house was built, the contractor placed the house too far back on the Property.
6. The Board found that Ms. Kehm testified that a screen porch cannot be built without the variance and that there is no other location on the Property to allow for a screened porch.
7. The Board found that Ms. Kehm testified that the porch will enhance the Property and match the characteristics of the neighborhood.
8. The Board found that Mr. Kehm testified that there is a chicken farm on the other side of the road and there are a lot of bugs associated with that farm. He believes that a screened porch is necessary for comfortable outdoor living due to flies and mosquitoes.
9. The Board found that Ms. Kehm testified that the house backs up to a road and that the Applicants maintain 3 feet of common ground behind their property.
10. The Board found that Ms. Kehm testified that the developer deeded to them an additional 5 feet because the rear yard was so shallow. She believes that approximately ten other lots along Wild Goose Way received similar dedications.
11. The Board found that Ms. Kehm testified that granting the variance will not affect visibility in the neighborhood.
12. The Board found that Ms. Kehm testified that the builder should have placed the home 30 feet from Bayberry Court, but actually placed it 37 feet from the road creating the issue with the rear yard setbacks.
13. The Board found that Ms. Kehm testified that the requested 2 feet is to allow flexibility should the contractor make a mistake but only 1.2 feet is necessary for an 8 foot porch.

14. The Board found that Ms. Kehm testified that a porch which was only 6 feet deep would be too small.
15. The Board found that Ms. Kehm testified that the Property is unique as it backs up to community ground which is maintained by the Applicants.
16. The Board found that Ms. Kehm testified that it cannot otherwise be developed for a screen porch without the variance.
17. The Board found that Ms. Kehm testified that the variance will not alter the essential character of the neighborhood as there are a number of screened porches in the development.
18. The Board found that Ms. Kehm testified that the variance requested is the minimum variance to afford relief.
19. The Board found that Ms. Kehm testified that the Applicants believe the homeowners association will approve the request.
20. The Board found that Ms. Kehm testified that one neighbor may seek a variance for a screen porch.
21. The Board found that Ms. Kehm testified that Lot 69 has a smaller house so no variance was needed for its porch.
22. The Board found that Ms. Kehm testified that they are choosing to build the structure.
23. The Board found that no one appeared in support of or opposition to the Application.
24. 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 Applicants failed to demonstrate that the Property was unique and that the uniqueness of the Property has created an exceptional practical difficulty. The lot measures 8,250 square feet and is rectangular. The Applicants did not present evidence of unique topography or other conditions which would effectively limit their ability to develop the Property and which created an exceptional practical difficulty. Rather, the difficulty is clearly the result of the Applicants' intention to construct a screen porch within the setback areas. The Board notes that the Applicants argued that the developer placed the home too far back on the lot but, the Applicants also admitted that developer deeded to them an additional 5 feet of land to the rear of the lot. According to the Applicants, neighbors received similar dedications. As such, the Applicants have failed to demonstrate that there was some unique condition which has created the exceptional practical difficulty.
 - b. The Applicants failed to prove that the Property could not be developed in strict conformity with the Sussex County Zoning Code. Rather, the Property is already developed in strict conformity with the Code with a dwelling. The Applicants now seek to add onto their existing structure by adding a porch. The porch, however, does not fit within the building envelope and will encroach into the rear yard setback area. The Applicants argue that a porch measuring 6 feet deep would not suffice for their needs but the Applicants failed to demonstrate that there was no other way to reasonably develop the lot without a variance. The Board also notes that the Applicants have requested a variance of 2 feet but admit that a variance of only 1.2 feet is needed to build the porch they want. The Board was simply not convinced that the Applicants could not otherwise develop the Property in compliance with the Code. Perhaps the porch would not be in the exact location where the Applicants want it to be located or be the size the Applicants wish but the Property appears to have a large enough building envelope for the Applicants to develop the Property in compliance with the Sussex County

Zoning Code. The Applicants note that a neighbor has a similar porch but the Applicants also admit that their neighbor has a smaller house so no variance was necessary. For these reasons, the Board finds that the Property could be developed in strict conformity with the Code and that the variance is 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 this 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 building envelope appears to otherwise be able to fit a porch, albeit a smaller one, without the need for the variance. 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 develop the Property in compliance with 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. 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 needed to afford relief since there is space to develop 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 Dr. Kevin Carson, Mr. Jeffrey Chorman, Mr. John Williamson, and Mr. Brent Workman. Ms. Ellen Magee voted against the Motion to deny the variance application.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY



John Williamson
Acting Chair

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

Date January 25, 2021