

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: JOHN BYRNES & KATHERINE CUNNINGHAM

(Case No. 12543)

A hearing was held after due notice on April 19, 2021. The Board members present were: Dr. Kevin Carson, Mr. Jeff Chorman, Mr. John T. Hastings, Mr. John Williamson, and Mr. Brent Workman.

Nature of the Proceedings

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

Findings of Fact

The Board found that the Applicants are requesting a variance of 5.88 feet from the ten (10) feet rear yard setback requirement for a proposed sunroom and a variance of 6.01 feet from the ten (10) feet rear yard setback requirement for proposed steps. This application pertains to certain real property located on the north side of Marina Bay Circle within The Peninsula Development (911 Address: 33469 Marina Bay Circle, Millsboro) said property being identified as Sussex County Tax Map Parcel Number 2-34-30.00-310.00 Unit 25. After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a portion of the tax map of the area, an aerial photograph of the Property, a site plan of the Property dated February 9, 2021, and two letters in support of the Application.
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 John Byrnes and Katherine Cunningham were sworn in to testify about the Application.
4. The Board found that Mr. Byrnes testified that the Applicants wish to enclose a paver patio which encroaches into the setbacks. The patio is located to the rear of the home.
5. The Board found that Mr. Byrnes testified that the Property is unique because the house was built directly on the rear yard setback line thereby restricting the Applicants' ability to construct a sunroom. Mr. Byrnes noted that the dwelling takes up most of the building envelope.
6. The Board found that Mr. Byrnes testified that there is no other location where an indoor / outdoor enclosure can be installed as there is a very narrow space between the homes and side setbacks.
7. The Board found that Mr. Byrnes testified that there are similar sunrooms in the neighborhood.
8. The Board found that Mr. Byrnes testified that the exceptional practical difficulty was not created by the Applicants.
9. The Board found that Mr. Byrnes testified that the variances will not alter the essential character of the neighborhood as there are many homes in the community with sunrooms attached and the style of the addition will match the existing homes in the community.
10. The Board found that Mr. Byrnes testified that these variances are the minimum variances to afford relief as the side setback is tight and encroaching into the rear setback area is the only possibility.
11. The Board found that Mr. Byrnes testified that, due to the narrow width of the 15 feet available, the depth must be enough to allow the minimum 200 square feet for

furniture layout and egress path. He believes that the sunroom needs to be this size to accommodate furniture.

12. The Board found that Mr. Byrnes testified that homeowner association approval will be sought following the outcome of this variance request and that he doubts the homeowner association will object. He testified that he has approached the homeowner association about this request and the homeowner association suggested that he obtain approval from the Board first.
13. The Board found that Ms. Cunningham testified that there is a pond to the rear of the Property and that the Applicants would like to be able to enjoy the outdoors without the nuisance of bugs.
14. The Board found that Mr. Byrnes testified that a neighbor received a variance from the rear yard setback requirement for a patio.
15. The Board found that Mr. Byrnes testified that the dwelling is 2 stories tall and is a detached single-family home.
16. The Board found that Ms. Cunningham testified that there are many screened porches in the Community.
17. The Board found that Joseph Giannetto was sworn in to give testimony in support of the Application.
18. The Board found that Mr. Giannetto testified that the requested variance for the sunroom is consistent with the character of the neighborhood and that the sunroom addition will be similar to others in the neighborhood.
19. The Board found that one person appeared in support of and no one appeared in opposition to the Application.
20. 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 due to its development, size, and shape. The Property has been developed by a dwelling on a small and narrow lot. The lot's uniqueness is clear when reviewing the survey of the Property and the placement of the house leaves little room for a reasonably sized sunroom without a variance. These conditions are unique and have created an unnecessary hardship and exceptional practical difficulty for the Applicants who seek to construct a reasonably sized sunroom and steps on the lot.
 - 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 situation and the Property, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Applicants seek to add proposed structures on the lot but are unable to do while complying with the Sussex County Zoning Code. The Board is thus convinced that the variances are necessary to enable the reasonable use of the Property as the variances will allow the Applicants to construct the addition and steps. The Board is convinced that the size, shape, and location of the proposed addition and steps are reasonable. The Board notes that the addition is large enough to accommodate reasonable furniture and ingress and egress to the sunroom.
 - d. The unnecessary hardship and exceptional practical difficulty were not created by the Applicants. As discussed above, the Property has unique conditions which have limited the Applicants' ability to reasonably develop the Property. The Applicants did not create the unique shape and size of the lot or place the house on the lot. The Board was convinced that the Applicants have not created the exceptional practical difficulty and unnecessary hardship. Furthermore, the Board is convinced that the

Applicants did not come to the Property with an illegal use in mind. Rather, the Applicants are limited by the physical conditions of the Property and the prior development thereof.

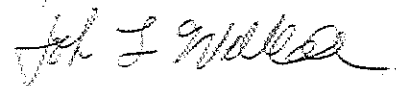
- e. The variances will not alter the essential character of the neighborhood nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare. The Board is convinced that addition and steps will have no effect on the character of the neighborhood. The addition will be located on a similar footprint to an existing patio and the sunroom will be designed to look similar to other sunrooms in the neighborhood. There was no evidence that the structures would alter the character of the neighborhood or be detrimental to the public welfare. The Board also notes that the rear of the property is adjacent to community lands rather than lands of another homeowner and that the Applicants will have to get homeowner association approval as well.
- 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 reasonably sized sunroom and steps on the lot. The size of the sunroom appears to be the minimum size to allow for reasonable furniture and access. The Board notes that the sunroom will be located such that most of the sunroom will be located within the building envelope.
- 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. Travis Hastings, Mr. John Williamson, and Mr. Brent Workman. Dr. Kevin Carson and Mr. Jeffrey Chorman voted against the Motion to approve the variance application.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY



John Williamson
Chair

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

Date June 21, 2021