

**BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY**

**IN RE: BERNICE O'HARA**

**(Case No. 11581)**

A hearing was held after due notice on June 8, 2015. The Board members present were: Mr. Dale Callaway, Mr. Jeff Hudson, Mr. John Mills, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for a variance from the rear yard setback requirement.

Findings of Fact

The Board found that the Applicant was seeking a variance of 7.2 feet from the twenty (20) feet rear yard setback requirement for a proposed sunroom addition. This application pertains to certain real property located on the southeast side of Ashwood Drive and being Lot 13 and ½ Lot 14 within Angola by the Bay Subdivision (911 Address: 32734 Ashwood Drive, Lewes); said property being identified as Sussex County Tax Map Parcel Number 2-34-11.20-149.00.

1. The Board was given copies of the Application, a portion of the tax map of the area, and an undated survey of the Property.
2. The Board found that the Office of Planning & Zoning had not received any correspondence in support of or in opposition to the Application.
3. Bernice O'Hara and Ronald Simmons were sworn in to testify about the Application.
4. The Board found that Mr. Simmons testified that he is the contractor for the Applicant and that the Applicant seeks to construct a sunroom on the rear of her house.
5. The Board found that Mr. Simmons testified that the existing dwelling is small and additional living space is needed.
6. The Board found that Mr. Simmons testified that the addition cannot be built on either side of the dwelling due to an existing garage and lack of space.
7. The Board found that Mr. Simmons testified that the Property is pie shaped making it unique.
8. The Board found that Mr. Simmons testified that the only reasonable place to build the addition is to the rear of the dwelling.
9. The Board found that Mr. Simmons testified that the proposed sunroom addition measures 12 feet by 16 feet and is the smallest size that would afford a reasonable use because it affords enough room for a table and chairs.
10. The Board found that Mr. Simmons testified that the sunroom cannot otherwise be developed in strict conformity with the Sussex County Zoning Code.
11. The Board found that Mr. Simmons testified that the difficulty was not created by the Applicant.
12. The Board found that Mr. Simmons testified that the Applicant owns the adjacent property which has been merged with the Property as shown on the survey. Meanwhile, the rear yard is adjacent to common area.
13. The Board found that Mr. Simmons testified that the variance will not alter the character of the neighborhood and the use will not be detrimental to the public welfare. There are many other homes in the community with similar additions.
14. The Board found that Mr. Simmons testified that the variance requested is the least modification possible of the regulation at issue.
15. The Board found that Ms. O'Hara testified that the common area to the rear of the Property is approximately the width of a road.

16. The Board found that Ms. O'Hara testified that her neighbors do not object to the variance request.
17. The Board found that Ms. O'Hara testified that her existing dwelling is a one (1) story structure and is approximately 1,200 square-feet in size. The dwelling is small and she needs additional space to accommodate her family.
18. The Board found that one (1) party appeared in support of the Application.
19. The Board found that no parties 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 has a unique shape which is apparent when reviewing the survey attached the Application. The Property has a narrow front yard which angles outward to the rear but creates a very small building envelope. The rear yard property line is also curved which further limits the buildable area. The uniqueness of the Property has created an exceptional practical difficulty for the Applicant who seeks to construct a sunroom on the Property.
  - b. Due to the uniqueness of the Property, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Applicant seeks the requested variance in order to construct the proposed sunroom on the Property. The sunroom cannot be constructed elsewhere on the Property due to the narrowness of the front yard and the unique shape of the Property. The Board is convinced that the sunroom is a reasonable size and shape as it will allow the Applicant to place a table and chairs therein. The Board is also convinced that the sunroom will provide the Applicant with needed additional living space. The dwelling is small and the Applicant needs more space for her family. The Board is convinced that the variance is necessary to enable the reasonable use of the Property as the variance will allow the Applicant to build a reasonably sized sunroom on the Property. The Board is convinced that the location of the sunroom is also reasonable; which is confirmed when reviewing the survey.
  - c. The exceptional practical difficulty was not created by the Applicant. The Property's unique shape has created a unique building envelope. The difficulty is clear when reviewing the survey. The Applicant did not create the unique shape of the Property and she needs additional living space to accommodate her family. As such, it is clear to the Board that the exceptional practical difficulty was not created by the Applicant.
  - d. 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 sunroom will not have a negative impact on the neighborhood. Other homes in the neighborhood have similar sunrooms and no evidence was presented which would indicate that the variance would somehow alter the essential character of the neighborhood or be detrimental to the public welfare. Rather, the Applicant has spoken with her neighbors and they do not object to the Application. Furthermore, the sunroom will encroach into the rear yard setback area which abuts common area. The impact of the sunroom on neighboring properties is thus minimal, if any.
  - e. The variance sought is the minimum variance necessary to afford relief and the variance requested represents the least modification possible of

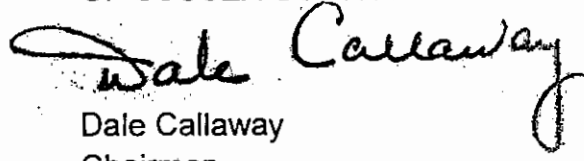
the regulation at issue. The Applicant has demonstrated that the variance sought will allow for the construction of the proposed sunroom on the Property as shown on the survey and that no additional variances are being requested. The Board is convinced that the size of the sunroom is the minimum size to afford the Applicant with a reasonable use thereof and that the Applicant has exhausted all reasonable measures to minimize the size of the variance requested.

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 were Mr. Dale Callaway, Mr. Jeff Hudson, Mr. John Mills, and Mr. Brent Workman. No Board Members voted against the Motion to approve the variance application.

BOARD OF ADJUSTMENT  
OF SUSSEX COUNTY

  
Dale Callaway  
Chairman

If the use is not established within one (1)  
year from the date below the application  
becomes void.

Date July 21, 2015