

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

**IN RE: CHRISTINE MURPHY, TRUSTEE**

**(Case No. 11591)**

A hearing was held after due notice on June 22, 2015. The Board members present were: Mr. Dale Callaway, Mr. Jeff Hudson, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for variances from the front and rear yard setback requirements.

Findings of Fact

The Board found that the Applicant is seeking a variance of 1.2 feet from the thirty (30) feet front yard setback requirement for an existing dwelling, a variance of 8.4 feet from the twenty (20) feet rear yard setback requirement for an existing deck, and a variance of 18.4 feet from the twenty (20) feet rear yard setback requirement for an existing deck. This application pertains to certain real property located on the south side of Marina Drive East approximately 760 feet south of Woodland Circle within Angola by the Bay (911 Address: 23597 Marina Drive East, Lewes); said property being identified as Sussex County Tax Map Parcel Number 2-34-17.08-146.00.

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 did not receive any correspondence regarding the Application.
3. Colleen Conaty was sworn in to testify about the Application. William Schab, Esquire, presented the case on behalf of the Applicants.
4. The Board found that Mr. Schab stated that the Trust owns the Property and that Ms. Conaty is the daughter of the trustee.
5. The Board found that Mr. Schab stated that the Property is being sold and the survey completed for settlement showed the encroachments. The sale of the Property is pending the approval of this application.
6. The Board found that Mr. Schab stated that the Property was purchased in 1973 by Ms. Conaty's parents and they placed the modular dwelling on the Property in the mid-1970s. The additions to the dwelling were also constructed in the 1970's. All structures on the Property have been there since that time.
7. The Board found that Mr. Schab stated that the Property was placed in a trust in 1995.
8. The Board found that Mr. Schab stated that Ms. Conaty's mother passed away in 2013 and the trust directs that the Property must be sold.
9. The Board found that Mr. Schab stated that the shed has been removed from the Property.
10. The Board found that Mr. Schab stated that the Property is a unique pie shape and the shape of the lot makes it difficult to place a modest-sized dwelling. The existing septic system and need for parking dictated the placement of the dwelling.
11. The Board found that Mr. Schab stated that the Property is adjacent to the common area.
12. The Board found that Mr. Schab stated that the Property cannot be developed in strict conformity without moving the existing dwelling and removing the deck at a large expense.

13. The Board found that Mr. Schab stated that the previous owners and the Applicant were unaware of the encroachments.
14. The Board found that Mr. Schab stated that the variances will not alter the essential character of the neighborhood.
15. The Board found that Mr. Schab stated that the variances requested are the minimum variances necessary to afford relief.
16. The Board found that Ms. Conaty, under oath, confirmed the statements made by Mr. Schab.
17. The Board found that Ms. Conaty testified that she was surprised to learn of the encroachments.
18. The Board found that no parties appeared in support of or in opposition to the Application.
19. 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 unique pie-shape and narrow width. The Property is only 43.18 feet wide in the front yard and is quite small. The unique characteristics of this Property limit the buildable area available to the Applicant and have created an exceptional practical difficulty for the Applicant. The buildable area is further limited by the existing septic system and the need for parking. The uniqueness of the Property is evident when reviewing the survey submitted by the Applicant.
  - b. Due to the uniqueness of the lot, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Applicant seeks to retain a dwelling and decks of a reasonable size but is 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 a reasonably sized dwelling and decks to be retained on the Property. The Board is convinced that the size, shape, and location of the dwelling and decks are reasonable, which is confirmed when reviewing the survey.
  - c. The exceptional practical difficulty was not created by the Applicant. The unusual characteristics of the Property has created the exceptional practical difficulty. The Applicant is also a trust which is selling the Property. The prior owner of the Property placed the Property into a trust many years ago and the prior owner recently passed away. The trust directs that the Property be sold and the current trustee was not involved in the development of the Property. The unique characteristics of the Property, which are clear when reviewing the survey, have created an exceptional practical difficulty. The current trustee also did not construct the dwelling and decks as those features were placed on the lot by a prior owner. It is clear to the Board that the exceptional practical difficulty was not created by the Applicant.
  - d. 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. Some of the encroachments are into the rear yard setback area which is adjacent to common area. The dwelling and decks have also been in their present location for nearly 40 years with no complaint about the encroachments having been submitted into the record. Rather, it appears as though the dwelling and decks are likely part of the character of the neighborhood. Furthermore, no evidence was presented which would

indicate that the variances would somehow alter the essential character of the neighborhood or be detrimental to the public welfare.

- e. 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 Applicant has demonstrated that the variances sought will allow the dwelling and decks to remain in their existing location. No variance is being sought for an addition to the existing dwelling and decks.

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, Mr. Norman Rickard, 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 August 4, 2015