

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: GEOFFREY T. ANDERS AND JEANNE M. GABLE

(Case No. 11684)

A hearing was held after due notice on December 21, 2015. The Board members present were: Mr. Dale Callaway, Mr. John Mills, Mr. Jeff Hudson, Mr. Norman Rickard, 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 Applicants are seeking a variance of 5.4 feet from the twenty (20) feet rear yard setback requirement for an existing deck. This application pertains to certain real property located on the northeast side of Woodland Way approximately 402 feet west of Woodland Circle (911 Address: 33213 Woodland Way, Lewes); said property being identified as Sussex County Tax Map Parcel Number 2-34-12.17-138.00.

1. The Board was given copies of the Application, a letter of no objection, 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 received one (1) letter in support of the Application and no correspondence in opposition to the Application.
3. The Board found that Jeanne Gable was sworn in to testify about the Application and William Schab, Esquire, appeared on behalf of the Applicants.
4. The Board found that Mr. Schab stated that the Property is located in Angola by the Bay and is irregularly shaped.
5. The Board found that Mr. Schab stated that the Applicants purchased the Property in 2011.
6. The Board found that Mr. Schab stated that one corner of the deck encroaches by inches into the setback area.
7. The Board found that Mr. Schab stated that the deck was inspected by Sussex County after it was constructed and a Certificate of Compliance was issued. Angola by the Bay approved the deck when it was constructed as well. A survey dated 1999 also showed the encroachment and was approved by Sussex County.
8. The Board found that Mr. Schab stated that the Applicants have not made any additions to the deck.
9. The Board found that Mr. Schab stated that the Property is unique due to its irregular shape.
10. The Board found that Mr. Schab stated that the Property cannot otherwise be developed.
11. The Board found that Mr. Schab stated that the rear yard is adjacent to the open space in the development.
12. The Board found that Mr. Schab stated that the previous owners built the deck and the difficulty was not created by the Applicants.
13. The Board found that Mr. Schab stated that the variance will not alter the essential character of the neighborhood. There are other properties in the neighborhood where similar variances have been granted.
14. The Board found that Mr. Schab stated that the variance is the minimum variance to afford relief.

15. The Board found that Mr. Schab stated that the Homeowners Association has no objection to the Application.
16. The Board found that Ms. Gable, under oath, affirmed the statements made by Mr. Schab.
17. The Board found that no parties appeared in support of or in opposition to the Application.
18. 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 unusual shape which is clearly evident when reviewing the survey provided by the Applicants. The front of the Property is much narrower than the rear of the Property. The front and rear property lines are also curved. This shape greatly reduces the building envelope on the Property and has created an exceptional practical difficulty for the Applicants who seek to retain an existing deck on the lot.
 - b. 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 shape which limits the building envelope. The Applicants seek to retain a deck of a reasonable size but are unable to do so without violating the Sussex County Zoning Code. The Board is convinced that the variance is necessary to enable the reasonable use of the Property as the variance will allow a reasonably sized deck to remain on the Property. The Board is convinced that the shape and location of this deck are also reasonable, which is confirmed when reviewing the survey provided by the Applicants.
 - c. The exceptional practical difficulty was not created by the Applicants. The Applicants did not create the unique shape of the lot which has resulted in a limited building envelope on the Property. The Applicants also did not place the deck on the Property. Rather, a prior owner built the deck and obtained a Certificate of Compliance from Sussex County. The Applicants reasonably believed that the deck complied with the setback requirements only to later find out that a small portion of the deck encroached into the setback area. The unique characteristics of the Property are clear when reviewing the survey. The Board is convinced that the exceptional practical difficulty was not created by the Applicants but was created by the lot's unique characteristics and by the placement of the deck thereon by the prior owner.
 - 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 deck will have no effect on the character of the neighborhood. The deck has been on the Property since at least 1999 and, despite the longstanding location of this deck, no complaints were noted in the record about the location of the deck. Rather, the homeowners association has indicated its support of the Application. Furthermore, 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. The Board also notes that the deck encroaches only inches into the setback area.
 - e. The variance sought is the minimum variance necessary to afford relief and the variance requested represents the least modification possible of

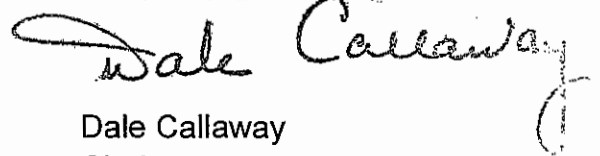
the regulation at issue. The Applicants have demonstrated that the variance sought will allow the Applicants to retain a reasonably sized deck on the Property. The Applicants do not intend to make any additions to the deck and only seek the variance to allow the existing deck to remain in its current location.

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 Member voted against the Motion to approve the variance application. Mr. Norman Rickard was not present and did not participate in the discussion or vote of this 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 March 1, 2016