

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: THE JAMES P. MCRORIE FAMILY TRUST

(Case No. 11704)

A hearing was held after due notice on February 1, 2016. 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 variances from the side yard setback requirement.

Findings of Fact

The Board found that the Applicant is seeking a variance of 2.3 feet from the ten (10) feet side yard setback requirement on the east side for an existing dwelling and a variance of 0.56 feet from the five (5) feet side yard setback requirement on the east side for an existing set of steps / porch. This application pertains to certain real property located on the south side of Spruce Court approximately 213 feet west of Sycamore Drive (911 Address: 32860 Spruce Court, Lewes); said property being identified as Sussex County Tax Map Parcel Number 2-34-11.20-94.00.

1. The Board was given copies of the Application, a portion of the tax map of the area, a building permit dated August 3, 1972, and a survey of the Property dated September 8, 2015.
2. The Board found that the Office of Planning & Zoning received had not received any correspondence in support of or in opposition to Application. A front yard setback variance was not required since the setback requirement changed after the construction of the dwelling and Certificate of Compliance had been issued.
3. The Board found that David Plivelich was sworn in to testify about the Application and Shannon Carmean Burton, Esquire, appeared on behalf of the Applicant. Mrs. Burton submitted exhibits to the Board to review.
4. The Board found that Mrs. Burton stated that Romualda McRorie is the Co-Trustee of the James P. McRorie Family Trust and is unable to attend the hearing. Ms. McRorie and her husband purchased the Property in 1968 and transferred the Property to a family trust in 1996. The Applicant's husband passed away in 2008.
5. The Board found that Mrs. Burton stated that a building permit for the dwelling and steps / porch was obtained in 1972. The setback requirement in 1972 was twenty-five (25) feet which is different from the current setback requirements. A front yard setback variance was not required since the setback requirement changed since the construction of the dwelling.
6. The Board found that Mrs. Burton stated that Applicant entered into an agreement to sell the Property and a survey completed for settlement showed the encroachments and the Applicant was unaware of any encroachments prior to that time.
7. The Board found that Mrs. Burton stated that there have been no changes to the Property since construction in 1972.
8. The Board found that Mrs. Burton stated that the Property is unique as it is long, narrow, and irregularly shaped. The unique conditions of the Property have created the exceptional practical difficulty.
9. The Board found that Mrs. Burton stated that the Property is located in the Angola by the Bay subdivision.

10. The Board found that Mrs. Burton stated that the Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code and the variances are necessary to enable reasonable use of the Property.
11. The Board found that Mrs. Burton stated that the exceptional practical difficulty was not created by the Applicant.
12. The Board found that Mrs. Burton stated that the variances will not alter the essential character of the neighborhood. There have been no complaints from the neighbors.
13. The Board found that Mrs. Burton stated that the use does not impair the uses of the neighboring and adjacent properties and the use is not detrimental to the public welfare.
14. The Board found that Mrs. Burton stated that the variances sought are the minimum variances to afford relief and the variances are the least modification of the regulation at issue.
15. The Board found that Mr. Plivelich, under oath, affirmed the statements made by Mrs. Burton and testified that he is a realtor and familiar with the area.
16. The Board found that Mr. Plivelich testified the Property is now connected to Sussex County sewer.
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 unrebutted, 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 as it is long, narrow, and irregularly shaped as shown on the survey provided by the Applicant. The uniqueness of the Property has created a limited building envelope on the Property and has created an exceptional practical difficulty for the Applicant who seeks to retain a dwelling and porch / steps 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 width and shape and the buildable area thereof is limited due to this uniqueness. The Applicant seeks to retain a dwelling and porch / steps 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, porch, and steps to remain on the Property. The Board is convinced that the shape and location of these structures are also reasonable, which is confirmed when reviewing the survey and pictures provided by the Applicant.
 - c. The exceptional practical difficulty was not created by the Applicant. The Applicant did not create the unusual size and shape of the Property which has resulted in a limited building envelope on the Property. The small building envelope and the lot's unique characteristics have created the exceptional practical difficulty.
 - 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. The Board is convinced that the dwelling, porch, and steps will have no effect on the character of the neighborhood. These structures have been on the Property since approximately 1972. Despite the longstanding location of these structures, no complaints were noted in the record about their location. 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. The Board also notes that the porch and steps encroach into the setback area by mere inches and the encroachment is likely difficult to see from neighboring properties.

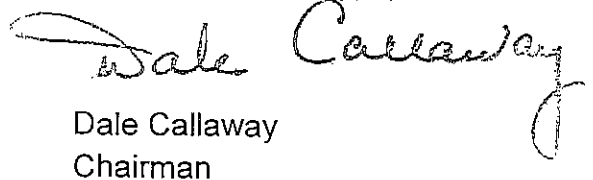
- e. The variances sought are the minimum variances necessary to afford relief and the variances requested represent the least modifications possible of the regulations at issue. The Applicant has demonstrated that the variances sought will allow the Applicant to retain a reasonably sized dwelling, steps, and porch on the Property. The Applicant does not intend to make any additions thereto and only seek the variances to allow the existing structures to remain in their current location.
- f. The Board notes that no front yard variance is required because the dwelling complied with the front yard setback requirement in effect at the time the dwelling was originally constructed.

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 Member 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 March 22, 2016.