

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: DAVID GATCHEL AND HELEN GATCHEL

(Case No. 11717)

A hearing was held after due notice on February 15, 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 a variance from the front yard setback requirement.

Findings of Fact

The Board found that the Applicants are seeking a variance of ten (10) feet from the thirty (30) feet front yard setback requirement for an existing deck. This application pertains to certain real property located on the west side of Dogwood Drive approximately 747 feet south of Angola Road (911 Address: 22852 Dogwood Drive, Lewes); said property being identified as Sussex County Tax Map Parcel Number 2-34-12.17-46.00.

1. The Board was given copies of the Application, assessment records, and a survey dated October 1987.
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. The Board found that Helen Gatchel was sworn in to testify about the Application.
4. The Board found that Ms. Gatchel testified that the Property is located in Angola by the Bay and measures 50 feet by 100 feet and is unique in size.
5. The Board found that Ms. Gatchel testified that the deck existed when the Applicants purchased the Property in 1987 and she was unaware that the deck was not in compliance with the Sussex County Zoning Code. The dwelling was built in the 1970s and the prior owner built the dwelling and the deck.
6. The Board found that Ms. Gatchel testified that a survey from October 1987 shows the deck and is noted as being approved by the Sussex County Planning & Zoning Commission.
7. The Board found that Ms. Gatchel testified that there have been no complaints about the deck.
8. The Board found that Ms. Gatchel testified that the variance requested is the minimum variance to afford relief.
9. The Board found that Ms. Gatchel testified that there are other decks in the neighborhood.
10. The Board found that Ms. Gatchel testified that the Applicants did not create the difficulty.
11. The Board found that Ms. Gatchel testified that the Applicants are selling the Property due to health issues and a realtor advised them of the encroachment.
12. The Board found that no parties appeared in support of or in opposition to the Application.
13. 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 situation is unique because the existing deck was constructed prior to the Applicants' purchase of the Property. The deck was clearly shown on a survey approved by the Sussex County Planning & Zoning Commission

in 1987. The deck encroaches into the front yard setback area and the Applicants seek approval to retain the deck. The situation is clearly unique and has created an exceptional practical difficulty for the Applicants who seek to retain the deck on the lot. This difficulty is exacerbated because the Property is small and narrow, which is a unique condition and has created a limited building envelope.

- b. Due to the uniqueness of the Property and the situation, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The deck was constructed prior to the Applicants' purchase of the Property and the Applicants seek to retain the deck but are unable to do so without violating the Sussex County Zoning Code. The deck, which runs the width of the dwelling, likely cannot be moved. 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 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 build the dwelling or the deck. Rather, the dwelling and deck were placed on the Property by a prior owner. The Applicants purchased the Property in 1987 and relied on an approved survey showing the deck in its present location. The Property is also small and narrow which has resulted in a limited building envelope. The situation is unique and has created the exceptional practical difficulty for the Applicants.
- 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 1987 without recorded complaints. Despite the longstanding location of the deck and notification to neighbors, no complaints were noted in the record about its location. 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.
- 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 the deck on the Property. No additions to the deck are proposed.

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 April 5, 2016