

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

**IN RE: RENEE WEST & RICHARD WEST**

**(Case No. 11787)**

A hearing was held after due notice on June 20, 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 rear yard setback requirement.

Findings of Fact

The Board found that the Applicants are seeking a variance of 7.8 feet from the twenty (20) feet rear yard setback requirement for an existing porch. This application pertains to certain real property located on the southwest side of Bridgeway Drive West in Angola by the Bay (911 Address: 23290 Bridgeway Drive West, Lewes); said property being identified as Sussex County Tax Map Parcel Number 2-34-17.08-7.00.

1. The Board was given copies of the Application, an aerial photograph of the Property, a portion of the tax map of the area, a survey of the Property dated May 4, 1982, a letter from the Angola by the Bay Property Owners Association, Inc., an email from the Applicants, and assessment records of the Property.
2. The Board found that the Office of Planning & Zoning received one (1) letter of support to the Application and no correspondence in opposition to the Application.
3. The Board found that Renee West and Cindy Baker were sworn in to testify about the Application.
4. The Board found that Ms. West testified that the Applicants purchased the Property in 2006 and the porch, which cannot be seen from the street, existed on the Property as shown on a survey dated 1982.
5. The Board found that Ms. West testified that the Property is adjacent to Burton Pond and common area in the rear yard. The porch overlooks Burton Pond and was built over twenty (20) years prior to the Applicants' purchase of the Property.
6. The Board found that Ms. West testified that the lot is unique in shape.
7. The Board found that Ms. West testified that the Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code.
8. The Board found that Ms. West testified that no further development can be built due to the existing common area between the rear yard and the water.
9. The Board found that Ms. West testified that the difficulty was not created by the Applicants and the Applicants were unaware of the need for the variance at the time they purchased the Property.
10. The Board found that Ms. West testified that the variance does not alter the character of the neighborhood and the use is not detrimental to the public welfare.
11. The Board found that Ms. West testified that the variance is the minimum variance to necessary afford relief and no additions to the porch are being proposed.
12. The Board found that Ms. West testified that the Applicants are selling the Property and did not know of the encroachment until preparing the Property for settlement.
13. The Board found that Ms. West testified that there have been no complaints from her neighbors and there are other similar porches in the neighborhood.

14. The Board found that Ms. Baker testified that she is the realtor for the Applicants and the variance does not adversely affect the neighborhood. She also testified that, without the existing porch, the value of the home would decrease.
15. The Board found that no parties appeared in support of or in opposition to the Application.
16. 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 as it is small and has a unique shape as shown on the survey. The front yard is also exceptionally narrow. The Board finds that the unique conditions of the lot have created a unique building envelope which has created an exceptional practical difficulty for the Applicants who wish to keep the existing porch, which overlooks Burton Pond, on the lot. The situation is also unique because the existing porch was constructed in 1982 and has been in its present location for many years but the encroachment has only recently been discovered. This situation has also created an exceptional practical difficulty for the Applicants.
  - b. Due to the uniqueness of the lot and the situation, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property has a unique size and shape and the buildable area thereof is limited due to its size and shape. The Applicants seek to retain the porch at its existing location 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 the Applicants to retain the porch on the lot. This porch has been in its current location since 1982. The Board is convinced that the size, shape, and location of the porch are reasonable, which is confirmed when reviewing the survey provided by the Applicants. The Board also notes that the removal of the porch would likely reduce the value of the Property as noted by the Applicants' realtor.
  - c. The exceptional practical difficulty was not created by the Applicants. The Applicants did not create the unusual size and shape of the Property. The unique lot size and shape have resulted in a limited building envelope on the Property and the small and unique building envelope has created an exceptional practical difficulty. The unique characteristics of the Property are clear when reviewing the survey. Furthermore, the porch was placed on the Property by a prior owner and has been in its present location for approximately 34 years. The Board is convinced that the exceptional practical difficulty was not created by the Applicants but was created the lot's unique characteristics and by the placement of the porch by a 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 porch will have no effect on the character of the neighborhood. The porch has been on the Property for many years and, despite its longstanding location, no complaints were noted in the record about its location. The homeowners association even submitted a letter supporting the Application. Ultimately, 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 porch on the lot in its current location. No variances for additions to this structure are being sought.

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 August 16, 2016