

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: ELWOOD R. GILGER, JR. & KRISTY E. GILGER

(Case No. 11808)

A hearing was held after due notice on July 18, 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 3.9 feet from the twenty (20) feet rear yard setback requirement for an existing porch and a variance of 3.7 feet from the five (5) feet rear yard setback requirement for an existing hot tub. This application pertains to certain real property located on the east side of Sycamore Drive approximately 647 feet south of Angola Road (911 Address: 22865 Sycamore Drive, Lewes); said property being identified as Sussex County Tax Map Parcel Number 2-34-11.20-81.00.

1. The Board was given copies of the Application, an aerial photograph of the Property, a portion of the tax map of the area, and a survey of the Property dated June 4, 2015.
2. The Board found that the Office of Planning & Zoning received no correspondence in support of or in opposition to the Application.
3. The Board found that Elwood Gilger was sworn in to testify about the Application.
4. The Board found that Mr. Gilger testified that the Property is unique as the lot measures 50 feet by 100 feet, with the front yard being narrower than the rear yard. The lot is wooded and has numerous large trees.
5. The Board found that Mr. Gilger testified that the hot tub and screen porch could not be relocated on the lot.
6. The Board found that Mr. Gilger testified that the rear yard is adjacent to a wooded common area in the subdivision.
7. The Board found that Mr. Gilger testified that the structures have been on the Property of twelve (12) years and it would be a financial hardship to bring the structures into compliance.
8. The Board found that Mr. Gilger testified that a previous owner constructed the porch and hot tub deck and he purchased the Property on June 18, 2015.
9. The Board found that Mr. Gilger testified that he has no plans for expansion of the dwelling, porch, or hot tub and he has not made any changes to the structures since acquiring the Property.
10. The Board found that Mr. Gilger testified that the structures do not alter the character of the neighborhood or adversely affect property values.
11. The Board found that Mr. Gilger testified that the Homeowners Association and neighbors have no objection to the Application.
12. The Board found that Mr. Gilger testified that the variances are the minimum variances to afford relief.
13. The Board found that one (1) party appeared in support of the Application.
14. The Board found that no parties appeared in opposition to the Application.
15. 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 small size and narrow shape. The small size of the Property has created an exceptional practical difficulty for the Applicants who seek to retain a porch and hot tub on the Property. These unique physical conditions have created an unusual and limited building envelope for the Applicants. Additionally, these structures were placed on the Property by a prior owner.
- b. Due to the uniqueness of the Property, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The porch and hot tub were placed on the Property in 2004 and the Applicants seek to retain those structures in their existing locations but are 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 the porch and hot tub to remain on the Property. The Board is convinced that the shape and location of these structures are reasonable, which is confirmed when reviewing the survey provided by the Applicants. The Board notes that it is unlikely that the structures could be brought into compliance with the Sussex County Zoning Code without great and unnecessary expense.
- c. The exceptional practical difficulty was not created by the Applicants. The Applicants did not create the unique condition of the lot which has resulted in a limited building envelope on the Property. The unique characteristics of the Property are clear from the record and 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. Furthermore, the structures were placed on the Property by a previous owner.
- 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 porch and hot tub will have no effect on the character of the neighborhood. The structures are located in the rear of the Property adjacent to lands which are heavily wooded and the homeowners association and neighbors have indicated support of the Application to the Applicants. 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 lack of evidence is telling since the structures have been on the Property for 12 years and, if the structures somehow altered the character of the neighborhood, there would be evidence of such impact.
- 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 Applicants have demonstrated that the variances sought will allow the Applicants to retain the hot tub and porch on the Property. The Applicants propose no additions to these structures.

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

Dale Callaway
Chairman

If the use is not established within one (1)
Year from the date below the application
Becomes void.

Date September 20, 2016.