

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: SPECIAL NEEDS TRUST FOR JOHN J. PHILLIPS

(Case No. 11810)

A hearing was held after due notice on August 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 a variance from the side yard setback requirement.

Findings of Fact

The Board found that the Applicant is seeking a variance of 3.5 feet from the ten (10) feet side yard setback requirement for an existing covered porch and handicap ramp. This application pertains to certain real property located on the north side of Linden Drive in Angola by the Bay (911 Address: 22883 Linden Drive, Lewes); said property being identified as Sussex County Tax Map Parcel 2-34-11.16-43.00.

1. The Board was given copies of the Application, a property record card, a letter from Aaron Baker, Esquire, pictures of the structure, Certificates of Compliance issued on May 9, 1997, a survey of the Property dated April 15, 2016, an aerial photograph of the Property, and a portion of the tax map.
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 John Phillips was sworn in to testify about the Application. Aaron Baker, Esquire, presented the case to the Board on behalf of the Applicant and submitted exhibits for the Board to review.
4. The Board found that Mr. Baker stated that the dwelling was constructed in 1997 by students from Sussex Technical High School and Habitat for Humanity placed the dwelling on the Property in 1997.
5. The Board found that Mr. Baker stated that the covered porch was built to provide shelter from inclement weather for Mr. Phillips as he enters and exits the dwelling. Mr. Phillips is handicapped and uses a wheelchair.
6. The Board found that Mr. Baker stated that a Certificate of Compliance was issued in 1997 certifying that the dwelling and additions complied with the Sussex County Zoning Code.
7. The Board found that Mr. Baker stated that the encroachment was only recently discovered.
8. The Board found that Mr. Baker stated that the Property has unique physical characteristics. The front and rear yard property lines are curved and the front yard is narrower than the rear yard.
9. The Board found that Mr. Baker stated that the irregular shape limits the building envelope and there is no room on the Property for a weather-shielded access to the dwelling without a variance.
10. The Board found that Mr. Baker stated that the porch is incorporated into the roof of the main dwelling.
11. The Board found that Mr. Baker stated that the variance is necessary to enable reasonable use of the Property.
12. The Board found that Mr. Baker stated that the difficulty was not created by the Applicant.
13. The Board found that Mr. Baker stated that the dwelling and porch were constructed by well-intentioned volunteers and the Applicant was unaware of any encroachments at that time.

14. The Board found that Mr. Baker stated that the porch does not alter the essential character of the neighborhood and there have been no objections from neighbors about the porch.
15. The Board found that Mr. Baker stated that the porch is consistent with the architecture of the main dwelling.
16. The Board found that Mr. Baker stated that the Applicant owns the parcel to the east of the Property and that parcel is undeveloped.
17. The Board found that Mr. Baker stated that the porch will not impair the uses of the neighboring and adjacent properties and is not detrimental to the public welfare.
18. The Board found that Mr. Baker stated that the variance requested is the minimum variance necessary to afford relief.
19. The Board found that Mr. Phillips, under oath, affirmed the statements made by Mr. Baker.
20. The Board found that Mr. Phillips testified that the porch and ramp were built in 1997 and there have been no changes made to the structures.
21. The Board found that Mr. Phillips testified there have been no complaints from his neighbors.
22. The Board notes that a variance was previously granted for the dwelling from the rear yard setback requirement. See Case No. 5391.
23. 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 clearly unique as it is a small lot with an odd shape. The Property consists of only 5,369 square feet more or less; as is clearly shown on the survey. The Property also has a narrower front yard than rear yard which has created an odd building envelope. The small size of the Property has created an exceptional practical difficulty for the Applicant and this difficulty is exacerbated by the narrowness of the front of the Property. These unique physical conditions have created an unusual and limited building envelope for the Applicant. Additionally, the Board notes that a Certificate of Compliance was issued in 1997 indicating that the dwelling and porch complied with the setback requirements. This Certificate of Compliance appears to have been issued in error but was relied upon by the Applicant to his detriment.
 - 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 ramp were constructed many years ago and the Applicant seeks to retain the porch and ramp on the same footprint but is 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 porch and ramp to remain on the Property. The Board is convinced that the shape and location of this porch and ramp are reasonable, which is confirmed when reviewing the survey provided by the Applicant. The Board notes that the Applicant is disabled and the porch and ramp provide the Applicant with safe ingress and egress to the home.
 - c. The exceptional practical difficulty was not created by the Applicant. The Property is an undersized lot with an unusual shape. The Board notes that the front yard is particularly narrow which greatly limits the building envelope of the lot. The encroachments were not discovered until well after the existing structures had been constructed. In fact, the Applicant reasonably believed that the structures complied with the Sussex County Zoning Code because a Certificate of Compliance had been issued. The Applicant also

did not build the structures. Rather, the Applicant relied on volunteers from Sussex Technical High School and Habitat for Humanity to construct and place the structures on the lot. These unique physical conditions have resulted in a limited building envelope and the limited building envelope and the error in placement have created the exceptional practical difficulty for the Applicant.

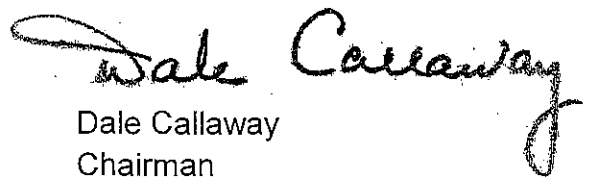
- d. The variance will not alter the essential character of the neighborhood nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare. The porch and ramp have been on the Property for many years without recorded complaints and no additions have been made thereto. Despite the longstanding locations of the porch and ramp 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. Notably, the property to the east of the Property is vacant and is owned by the Applicant.
- 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 Applicant has demonstrated that the variance sought will allow the Applicant to retain the existing porch and ramp on the same footprint. No additions are being sought or 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 October 4, 2016