

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: WALTER LATHBURY & NANCY LATHBURY

(Case No. 11822)

A hearing was held after due notice on August 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 side yard setback requirement.

Findings of Fact

The Board found that the Applicants are seeking a variance of 3.2 feet from the fifteen (15) feet corner side yard setback requirement on the west side for a proposed porch. This application pertains to certain real property located on the northeast corner of Bethany Drive and Clover Lane in the Bethany Meadows Subdivision (911 Address: 33785 Bethany Drive, Frankford); said property being identified as Sussex County Tax Map Parcel Number 1-34-17.00-381.00.

1. The Board was given copies of the Application, aerial photographs of the Property, a survey of the Property dated March 24, 2015, assessment records, and a portion of the tax map.
2. The Board found that the Office of Planning & Zoning received one (1) letter in support of and no letters in opposition to the Application.
3. The Board found that Walter Lathbury and Nancy Lathbury were sworn in to testify about the Application. The Applicants submitted pictures to the Board to review.
4. The Board found that Mr. Lathbury testified that the Applicants purchased the Property in 1998.
5. The Board found that Mr. Lathbury testified that, due to health reasons, the porch is needed to enjoy the outdoors and to provide easier access in and out of the dwelling. Mr. Lathbury uses a wheelchair at times.
6. The Board found that Mr. Lathbury testified that the lot is irregularly shaped and narrow. The Property is also a corner lot. The setback requirement for a side yard is ten (10) feet in this development but the corner side setback requirement is fifteen (15) feet.
7. The Board found that Mr. Lathbury testified that the Property is a small lot and the porch cannot be placed elsewhere on the lot.
8. The Board found that Mr. Lathbury testified that the Applicants did not create the exceptional practical difficulty.
9. The Board found that Mr. Lathbury testified that the Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code.
10. The Board found that Mr. Lathbury testified that the porch will not impact traffic or visibility on Bethany Drive or Clover Lane.
11. The Board found that Mr. Lathbury testified that the variance is the least modification of the regulation at issue.
12. The Board found that Ms. Lathbury testified that the proposed porch will not impede with the views of the neighbors and that neighbors and the homeowners association support the Application.
13. The Board found that Ms. Lathbury testified that the proposed size of the porch will allow for wheelchair accessibility.
14. The Board found that no parties appeared in support of or 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 clearly unique as it is a small lot with an odd shape; as is clearly shown on the survey. The Property is only sixty (60) feet wide in the rear yard and it is a corner lot. The odd shape of the lot combined with its small size and the corner setback requirements have created a small building envelope for the Applicants. These conditions have created an exceptional practical difficulty for the Applicants. Furthermore, the Applicants need to construct the porch to provide safer access to the home due to Mr. Lathbury's medical problems.
 - b. Due to the uniqueness of the Property, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The dwelling was constructed many years ago and the Applicants seek to build a reasonably sized porch to provide reasonable access to the dwelling 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 porch to be constructed on the Property. The Board is convinced that the shape and location of this porch are reasonable, which is confirmed when reviewing the survey provided by the Applicant. If the Property was not a corner lot or so oddly shaped, no variance would likely be needed for this porch.
 - c. The exceptional practical difficulty was not created by the Applicants. The Property is oddly shaped and has an unusual building envelope. The limitations of the building envelope are exacerbated by the corner side yard setback requirements. An additional difficulty has arisen because Mr. Lathbury suffers from medical problems and needs the porch for safer access to the residence. These unique physical conditions have resulted in a limited building envelope and have 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 pictures demonstrate that there are similar porches in the neighborhood and the un rebutted testimony of the Applicants evidences that the porch will have no impact on traffic. The Applicants have received support from neighbors and the homeowners association as well. Additionally, 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 construct a reasonably sized porch on the Property. The Applicants are unable to construct the porch elsewhere on the Property and the Board finds that the location of the porch is appropriate as it minimizes the need for a larger variance which would be needed if constructed elsewhere on the lot.
 - f. The Board also finds that the Applicant suffers from a disability and that the variance approval represents a reasonable accommodation.

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 18, 2016