

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

**IN RE: CAROLINE CARROLL**

**(Case No. 11853)**

A hearing was held after due notice on October 3, 2016. The Board members present were: Mr. Dale Callaway, Mr. John Mills, Mr. Jeff Hudson, and Mr. Norman Rickard.

Nature of the Proceedings

This is an application for variances from the front yard and side yard setback requirements.

Findings of Fact

The Board found that the Applicant is seeking a variance of 7.9 feet from the thirty (30) feet front yard setback requirement for an existing deck and a variance of four (4) feet from the ten (10) feet side yard setback requirement on the northeast side for an existing porch. This application pertains to certain real property is located on the north side of Clover Lane approximately 415 feet west of Oak Meadow Drive (911 Address: 27556 Clover Lane, Millsboro); said property being identified as Sussex County Tax Map Parcel Number 2-34-29.00-170.00.

1. The Board was given copies of the Application, a portion of the tax map of the area, an aerial photograph of the Property, a building permit issued on April 11, 1983, a building permit issued on November 3, 1992, the findings of fact, minutes, and application for a variance for Case No. 4848, pictures of the Property, and a survey of the Property dated August 2, 2016.
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 Dan Carroll and Martin Carroll were sworn in to testify about the Application.
4. The Board found that Dan Carroll testified that the Property is owned by his mother who now lives out of state in an assisted living facility. Due to the Applicant's absence, the Property needs to be sold.
5. The Board found that Dan Carroll testified that the survey completed for settlement showed the encroachments and they were unaware of any encroachments until the survey was completed.
6. The Board found that Dan Carroll testified that the structures have existed on the Property for over twenty-four (24) years.
7. The Board found that Dan Carroll testified that his father constructed the porch.
8. The Board found that Dan Carroll testified that the variances do not affect the character of the neighborhood and there have been no complaints from the neighbors.
9. The Board found that Dan Carroll testified that the variances are the minimum to afford relief.
10. The Board found that Dan Carroll testified that the variance granted in 1992 was based on a drawing and not a survey.
11. The Board found that Dan Carroll testified that the front deck has been on the Property since the house was built and the existing deck gives access to the existing sliding doors to the dwelling.
12. The Board found that Dan Carroll testified that there have not been any changes since the structures were built.
13. The Board found that no parties appeared in support of or in opposition to the Application.

14. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, which the Board finds 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 Applicant has moved to an assisted living facility and needs to sell the Property. A survey completed for settlement, however, showed that a porch encroached into the side yard setback area and a deck encroached into the front yard setback area. A variance had previously been granted to the Applicant for the porch but the variance was based on a drawing and not a survey. The actual location of the porch varies from the location set forth on that drawing. Had a survey been completed at that time, the encroachment would likely have been discovered earlier. Likewise, the deck which encroaches into the front yard has been on the Property for many years as well and likely would have been discovered with an earlier survey. The Board finds that the situation is unique and has created an exceptional practical difficulty for the Applicant who needs to sell the Property to fund her assisted living expenses.
  - b. Due to the uniqueness of the situation, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Applicant seeks the variances in order to retain a porch and deck which the Applicant reasonably believed complied with the setback requirements. The Applicant previously received a variance for the porch and the deck has been on the Property since the house was built. The pictures provided by the Applicant demonstrate that the structures have likely been on the Property for many years. The pictures also demonstrate that the front of the dwelling has sliding doors and the deck is used for reasonable access to the front part of the dwelling. The Applicant is unable to retain the deck and porch on the Property without a variance. The Board is thus convinced that the variances are necessary to enable the reasonable use of the Property as the variances will allow the Applicant to retain the deck and porch. The Board is convinced that the size, shape, and location of the deck and porch are reasonable.
  - c. The exceptional practical difficulty was not created by the Applicant. The Applicant obtained a variance in 1992 for the porch and reasonably believed that the porch complied with the variance approval. Likewise, the deck on the front of the house has been on the Property since the house was constructed and the Applicant only recently became aware of the encroachment into the setback area after a survey was completed. It appears as though no survey was obtained which would have previously shown the encroachments but the Applicant and her husband obtained the necessary permits from Sussex County for these structures and had reason to believe the structures complied with the Sussex County Zoning Code. The situation is quite unique and the Board is convinced that the Applicant did not create the exceptional practical difficulty.
  - 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 porch and deck have been on the Property for many years and, despite the longstanding location of the porch and deck, no complaints were noted in the record about its location. No evidence was presented that the variances would somehow alter the essential character of the neighborhood or be detrimental to the public welfare.

- 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 Applicant has demonstrated that the variances sought will allow the Applicant to retain the porch and deck in their current location. No further addition or modification to those structures is 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, and Mr. Norman Rickard. No Board Member voted against the Motion to approve the variance application. Mr. Brent Workman did not participate in the discussion or vote of this 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 December 13, 2016.