

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY
IN RE: JEFFERY T. KACZMARCZYK, RICHARD KACZMARCZYK &
RAYMOND KACZMARCZYK, JR.

(Case No. 11857)

A hearing was held after due notice on October 17, 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 variances from the rear yard setback requirement.

Findings of Fact

The Board found that the Applicants are seeking a variance of 4.9 feet from the twenty (20) feet rear yard setback requirement for an existing porch and a variance of 1.9 feet from the five (5) feet rear yard setback requirement for an existing shed. This application pertains to certain real property located on the southeast side of Bridgeville Drive West approximately 156 feet south of Bridgeville Drive East in Angola by the Bay (911 Address: 23300 Bridgeway Drive West, Lewes); said property being identified as Sussex County Tax Map Parcel Number 2-34-17.08-11.00 & 12.00.

1. The Board was given copies of the Application, a portion of the tax map of the area, a survey of the Property dated August 24, 2016, and an aerial photograph of the area.
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 Shannon Carmean Burton, Esquire, presented the case to the Board on behalf of the Applicants and submitted exhibits for the Board to review including an affidavit of Jeffrey Kaczmarczyk, a survey of the Property, assessment records, and a copy of the deed to the Property.
4. The Board found that Mrs. Burton stated that the Property is located in the Angola by the Bay subdivision.
5. The Board found that Mrs. Burton stated that the Applicants' parents purchased the Property in 1984 and the Property was unimproved at that time.
6. The Board found that Mrs. Burton stated that the dwelling and porch were subsequently constructed and a Certificate of Compliance was issued in 1985. The shed was built in 2006 and a Certificate of Compliance was issued for that as well.
7. The Board found that Mrs. Burton stated that the Applicants' father passed away in 2005 and, in 2010, the Applicants' mother transferred interest in the Property to the Applicants while retaining an interest herself. The Applicants' mother passed away in 2013 and, per her Last Will & Testament, her interest in the Property passed to the Applicants.
8. The Board found that Mrs. Burton stated that, in August 2016, the Applicants entered an Agreement of Sale for the Property and a survey completed for settlement showed the encroachments. The Applicants were unaware of the encroachments until the survey was completed.
9. The Board found that Mrs. Burton stated that the porch has remained in the same location since 1985 and the shed has been in its present location since 2006.
10. The Board found that Mrs. Burton stated that the Property is unique as it is an irregularly shaped double lot located along the curved portion of Bridgeway Drive West.

11. The Board found that Mrs. Burton stated that the unique conditions of the Property have created an exceptional practical difficulty.
12. The Board found that Mrs. Burton stated that the Property cannot be developed in strict conformity with the Sussex County Zoning Code and the variances are necessary to enable reasonable use of the Property.
13. The Board found that Mrs. Burton stated that the exceptional practical difficulty was not created by the Applicants.
14. The Board found that Mrs. Burton stated that the Applicants believed the structures complied with the Sussex County Zoning Code because Certificates of Compliance had been issued.
15. The Board found that Mrs. Burton stated that the variances will not alter the essential character of the neighborhood and will not be detrimental to the public welfare.
16. The Board found that Mrs. Burton stated that the variances are the minimum variances necessary to afford relief.
17. The Board found that Mrs. Burton stated that the shed is on a permanent foundation and cannot be moved into compliance.
18. The Board found that Mrs. Burton stated that the rear yard is adjacent to a common area owned by the homeowners association.
19. The Board found that no parties appeared in support of or in opposition to the Application.
20. 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 an oddly shaped lot in Angola by the Bay. The Property has a narrow front yard compared with the rear yard and the front yard is curved. This unique shape has created an oddly shaped building envelope. The unique characteristics of the lot have created an exceptional practical difficulty for the Applicants who seek to retain a reasonably sized porch and shed on the Property. The situation is also unique because the Applicants' predecessors-in-title received Certificates of Compliance indicating that the structures complied with the Sussex County Zoning Code.
- b. Due to the uniqueness of the lot, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property has a unique building envelope due to its odd shape. The Applicants seek to retain an existing porch and shed but are unable to do so without violating the Sussex County Zoning Code. The variances are thus necessary to enable reasonable use of the Property as the variances will allow a reasonably sized porch and shed to remain on the Property. The Board is convinced that the shape and location of this porch and shed are also reasonable, which is confirmed when reviewing the survey provided by the Applicants. The Board also notes that the structures are permanent structures and cannot simply be moved into compliance with the Code.
- c. The exceptional practical difficulty was not created by the Applicants. The Applicants did not create the unique shape 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 the survey. The Applicants also did not place the structures on the Property. Rather, those structures were placed on the Property by prior owners who reasonably believed that the porch and shed complied with the Code because Certificates of Compliance were issued only for the Applicants to later find out the structures did not

comply with the Code. The Board finds that the previous owners detrimentally relied on this Certificates of Compliance. Since the Property has a unique shape and the Applicants did not place the porch and shed on the Property, the Board find that the Applicants 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 has been on the Property for approximately thirty (30) years without recorded complaints. Likewise, the shed has been on the Property for ten (10) years without complaint. Despite the longstanding location of the porch and shed and notification to neighbors, no complaints were noted in the record about their location. Furthermore, 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 Board also notes that the rear of the Property, where the encroachments are located, is adjacent to common areas owned by the homeowners association.
- e. The variances sought are the minimum variances necessary to afford relief and the variances requested represent the least modifications possible of the regulation at issue. The Applicants have demonstrated that the variances sought will allow the Applicants to retain the porch and shed in their existing locations. No additions to the porch and shed are being proposed.
- f. The Board notes that the statements made by Mrs. Burton are confirmed by a sworn affidavit submitted into the record by a prior owner; thus the Board finds Mrs. Burton's statements to be credible recitations of the statements made in the affidavit.

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 December 20, 2016.