

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

**IN RE: MARY JANE SCHOCH**

**(Case No. 11861)**

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 side yard and rear yard setback requirements.

Findings of Fact

The Board found that the Applicant is seeking a variance of one (1) foot from the ten (10) feet side yard setback requirement on the west side for an existing dwelling, a variance of 1.4 feet from the twenty (20) feet rear yard setback requirement for an existing dwelling, and a variance of seven (7) feet from the twenty (20) feet rear yard setback requirement for an existing deck. This application pertains to certain real property located on the north side of Woodland Circle approximately 35 feet east of Elmwood Avenue West (911 Address: 33937 Woodland Circle, Lewes); said property being identified as Sussex County Tax Map Parcel Number 2-34-18.05-29.00.

1. The Board was given copies of the Application, a survey dated August 26, 2016, a building permit, a Certificate of Compliance issued on November 10, 1987, a portion of the tax map of the area, and an undated survey.
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 Susannah Griffin was sworn in to testify about the Application.
4. The Board found that Ms. Griffin testified that she is a realtor representing the Applicant. The Applicant is elderly and lives in an assisted living facility. The Applicant is trying to sell the Property and a survey completed for settlement showed the encroachments.
5. The Board found that Ms. Griffin testified that the Applicant purchased the Property in 1987.
6. The Board found that Ms. Griffin testified that the dwelling and deck were on the Property and encroached into the rear yard setback area when the Applicant purchased the Property.
7. The Board found that Ms. Griffin testified that the Applicant added an attached garage to the west side of the dwelling in 2012. A Certificate of Compliance was issued for the attached garage.
8. The Board found that Ms. Griffin testified that the Applicant relied on contractor to construct the garage in compliance with the Sussex County Zoning Code.
9. The Board found that Ms. Griffin testified that the uniqueness of the Property is that the structures were built and that Certificates of Compliance were issued.
10. The Board found that Ms. Griffin testified that the Applicant had no reason to believe the Property was not in compliance with the Sussex County Zoning Code.
11. The Board found that Ms. Griffin testified that the Applicant is unable to sell the Property without the variances and the variances are necessary to enable reasonable use of the Property.
12. The Board found that Ms. Griffin testified that the difficulty was not created by the Applicant.

13. The Board found that Ms. Griffin testified that the variances will not alter the essential character of the neighborhood and the use is not detrimental to the public welfare.
14. The Board found that Ms. Griffin testified that the encroachments do not affect any other properties in the neighborhood.
15. The Board found that Ms. Griffin testified that the Property is located in the Angola by the Bay development and the rear yard of the Property is adjacent to common area in the development.
16. The Board found that Ms. Griffin testified that the variances are the minimum variances necessary to afford relief.
17. The Board found that Ms. Griffin testified that the recent survey differed from the original survey obtained by the Applicant.
18. The Board found that Ms. Griffin testified that the deck is level with the first floor of the dwelling.
19. The Board found that Ms. Griffin testified that it is unknown why the dwelling was built on the lot at an angle and the Applicant did not construct the house.
20. The Board found that no parties appeared in support of or in opposition to the Application.
21. 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 odd shape. The Property is somewhat pie-shaped and is narrower in the rear yard than the front yard. The odd shape of the lot has created an unusually shaped building envelope. The situation is also unique because the Applicant did not build the dwelling or the deck; both of which were located on the Property prior to the Applicant's acquisition thereof. A Certificate of Compliance was issued in 1987 indicating that the structures complied with the Sussex County Zoning Code but a recent survey shows that they actually encroach into the rear yard setback area. Likewise, an attached garage was constructed in 2012 and it encroaches into the side yard setback area. A Certificate of Compliance was also issued for the garage despite the encroachment. The Board finds that the unique physical characteristics of the Property and the unique situation related to the issuance of the Certificates of Compliance have created an exceptional practical difficulty for the Applicant who seeks to retain a dwelling and deck on the lot.
  - b. Due to the uniqueness of the lot and the situation, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property has a unique shape and the buildable area thereof is limited due to its shape. The Applicant seeks to retain a dwelling and deck of reasonable size but is 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 a reasonably sized dwelling and deck to remain on the Property. The Board is convinced that the shape and location of the dwelling and deck are also reasonable, which is confirmed when reviewing the survey provided by the Applicant. The Applicant, who is elderly and living in an assisted living facility, is unable to sell the Property without these variances.
  - c. The exceptional practical difficulty was not created by the Applicant. The Applicant did not create the unusual shape of the Property nor did the Applicant place the dwelling and deck on the Property. Those structures existed on the Property at the time the Applicant purchased the lot. While

the garage was placed on the Property during the Applicant's ownership thereof, the Applicant relied on her contractor to place the dwelling on the Property in conformity with the Sussex County Zoning Code. She reasonably believed that the contractor met his obligation because a Certificate of Compliance was issued for the garage. The Board is convinced that the exceptional practical difficulty was not created by the Applicant but was created the lot's unique characteristics and the unique circumstances described herein.

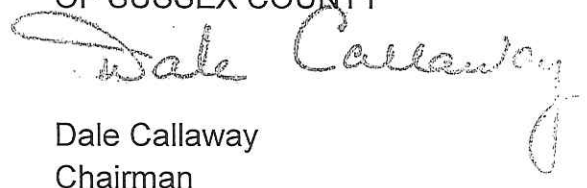
- d. The variances will not alter the essential character of the neighborhood nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare. The Board is convinced that the dwelling and deck will have no effect on the character of the neighborhood. The structures have been on the Property in their existing location since 1987. The portion of the dwelling which encroaches into the side yard setback has been in its existing location since 2012 and it only encroaches into the side yard setback area by 1 foot. This encroachment is particularly minimal as only a small corner of the dwelling actually encroaches into the setback area. It is doubtful that the encroachment would even be noticeable without a survey. The Board also notes that the rear yard of the Property is adjacent to common area owned by the Angola by the Bay community. There is no home on the lands directly behind the Property and it is unlikely that the rear yard variances would have any impact on those lands either. Notably, the structures in the rear yard have been in their present location for nearly 30 years yet no objection was 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.
- 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 a reasonably sized dwelling and deck on the Property. No additions or modifications to those structures are being 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 Members 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.