

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: EDWARD L. CLINE, SR.

(Case No. 11907)

A hearing was held after due notice on March 6, 2017. 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 4.3 feet from the five (5) feet side yard setback requirement on the south side for an existing carport and a variance of 4.7 feet from the five (5) feet rear yard setback requirement for an existing carport. This application pertains to certain real property located on the southwest side of Woodland Circle across from Holly Way East (911 Address: 33359 Woodland Circle, Lewes); said property being identified as Sussex County Tax Map Parcel Number 2-34-12.17-154.00.

1. The Board was given copies of the Application, a portion of the tax map of the area, an aerial photograph of the Property, the application, minutes, and Findings of Fact for Case No. 9335-2005, a survey dated August 31, 1993, and a survey dated December 8, 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 Edward L. Cline Jr., was sworn in to testify about the Application. Shannon Carmean Burton, Esquire, presented the case on behalf of the Applicant and submitted exhibits for the Board to review. The exhibits include a deed, letters in support of the Application, and a Certificate of Compliance dated February 17, 2006.
4. The Board found that Mrs. Burton stated that the Applicant purchased the Property in 1983.
5. The Board found that Mrs. Burton stated that the original variance was granted in 2005 and the carport was constructed in 2006.
6. The Board found that Mrs. Burton stated that the Applicant had no other location available on the Property where he could still gain access with motor vehicles. The location of the septic system further limited the available location for the carport.
7. The Board found that Mrs. Burton stated that there is no other place on the Property to locate the carport.
8. The Board found that Mrs. Burton stated that the Property is adjacent to common area in the rear.
9. The Board found that Mrs. Burton stated that the Applicant obtained the necessary permits and constructed the carport.
10. The Board found that Mrs. Burton stated that a Certificate of Occupancy was issued in 2006 for the existing carport by Sussex County.
11. The Board found that Mrs. Burton stated that the Applicant is selling the Property and a survey obtained as part of the settlement process showed the encroachments.
12. The Board found that Mrs. Burton stated that the Property is unique and is located in the Angola by the Bay development.. There have been numerous variances granted in the neighborhood.
13. The Board found that Mrs. Burton stated that the common area adjacent to the Property is a naturally wooded open space.

14. The Board found that Mrs. Burton stated that the exceptional practical difficulty is due to the uniqueness of the Property.
15. 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.
16. The Board found that Mrs. Burton stated that the carport was placed on a concrete pad and has been in that location for over 10 years. The Applicant does not intend to increase the size of the carport.
17. The Board found that Mrs. Burton stated that the variances will not alter the essential character of the neighborhood and the variances will not be detrimental to the public welfare.
18. The Board found that Mrs. Burton stated that neighbors and the homeowners association supported the initial application. There are letters in support of the Application from neighbors and there have been no complaints from neighbors.
19. The Board found that Mrs. Burton stated that the variances are the minimum variances necessary to afford relief and represent the least modifications of the regulations at issue.
20. The Board found that Mr. Cline, under oath, affirmed the statements made by Mrs. Burton.
21. The Board found that Mr. Cline testified that he is the Applicant's son.
22. The Board found that Mr. Cline testified that no additions have been made to the carport.
23. The Board found that Mr. Cline testified that the septic system located in the rear yard limited the placement of the carport.
24. The Board found that no parties appeared in support of or in opposition to the Application.
25. 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 situation is unique as the Applicant obtained a variance in 2005 for the construction of a carport. Thereafter, the Applicant obtained the necessary permits for the carport and constructed it on the Property. The Applicant received a Certificate of Compliance from Sussex County indicating that the carport complied with the Sussex County Zoning Code only to find out ten years later that the carport actually encroached farther into the setback areas than allowed. Notably, the additional encroachment into the side yard setback is only 0.3 feet. The Board notes that the Property is located in the Angola by the Bay development which also has a unique history. Many variances have been granted in this community. The Property is also adjacent to common area thereby giving the rear yard the appearance that it is larger than it actually is. The buildable area of the Property itself is constrained due to the location of a septic system in the rear yard. As such, the carport was proposed to be located in the only area where it could be placed while still providing accessibility for the vehicle using the carport. The Board finds that the unique characteristics of this Property and the situation have limited the buildable area available to the Applicant and have created an exceptional practical difficulty for the Applicant who seeks to retain a carport on the lot.
 - 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 buildable area due to the location of the septic system. The Applicant seeks to retain a carport of a 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 carport to remain on the Property. The Board is convinced that the shape and location of the carport are also reasonable, which is confirmed when reviewing the survey provided by the Applicant. The Board also notes that the carport is located on a concrete pad and has been its existing location for at least 10 years and cannot be moved elsewhere on the lot while still providing motor vehicle access to the carport. If a vehicle cannot safely access the carport, the purpose of having a carport is defeated.

- c. The exceptional practical difficulty was not created by the Applicant. The Property, which is not particularly large, is constrained due to the location of the septic system in the rear yard which limits the placement of the carport. The carport, by its very nature, needs to be constructed in a place where motor vehicles, which will benefit from the carport, can access it. In this case, the carport was built at the end of the driveway in the rear corner of the Property. There is no other location where the carport could be placed. The Applicant obtained a variance in 2005 for the carport and constructed the carport in good faith that it complied with the Sussex County Zoning Code. The Applicant even obtained a Certificate of Compliance from Sussex County confirming this belief. Only when a new survey was completed in 2016 did the Applicant learn of the encroachments. 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 situation.
- 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 carport will have no effect on the character of the neighborhood. The carport has been in its existing location for more than 10 years and no complaints have been noted in the record about its location. If some adverse impact on the character of the neighborhood existed, the Board would expect some evidence to that effect. Rather, no such 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 other variances have been granted in the neighborhood and that the carport is adjacent to common land in the rear yard. It is unlikely that the encroachment into the rear yard is even noticeable.
- 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 carport on the Property. No additions to the carport are 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 April 4, 2017