

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: STEVEN CONWAY

(Case No. 11978)

A hearing was held after due notice on June 19, 2017. The Board members present were: Mr. Dale Callaway, Ms. Ellen Magee, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for a variance from the front yard setback requirement.

Findings of Fact

The Board found that the Applicant is seeking a variance of 8.2 feet from the thirty (30) feet front yard setback requirement and a variance of 7.6 feet from the thirty (30) feet front yard setback requirement for a covered porch. This application pertains to certain real property located on the northeast side of Chippewa Avenue approximately 570 feet north of North Avenue (911 Address: 28339 Chippewa Avenue, Millsboro); said property being identified as Sussex County Tax Map Parcel Number 2-34-34.00-81.00-6694.

1. The Board was given copies of the Application, an aerial photograph of the Property, a survey dated March 16, 2015, assessment information, a Certificate of Compliance request, a picture of the Property, and a portion of the tax map.
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 Steven Conway was sworn in to testify about the Application. Mr. Conway submitted a letter supporting the Application.
4. The Board found that Mr. Conway testified that he seeks approval for a roof over his deck.
5. The Board found that Mr. Conway testified that the dwelling was built in the 1970s. The deck with a roof was built in 2014 and a permit was obtained. He relied on a contractor to build the roof. The deck is not enclosed with a screen.
6. The Board found that Mr. Conway testified that the neighboring homes have recently been renovated and there are similar enclosed decks in the neighborhood.
7. The Board found that Mr. Conway testified that he was seeking to improve his home and the roof improves the appearance of the home while providing cover during inclement weather.
8. The Board found that Mr. Conway testified that the covered deck will not alter the essential character of the neighborhood and his neighbors support the addition of a roof over the front deck.
9. The Board found that Mr. Conway testified that he planned to install a new shed to replace a shed that was damaged in a storm and the need for a variance for the deck was discovered at that time.
10. The Board found that Mr. Conway testified that the exceptional practical difficulty was not created by the Applicant.
11. The Board found that Mr. Conway testified that the roof exists over the deck and he does not ask to expand that roof or to enclose the deck.
12. The Board found that Mr. Conway testified that he believed that the deck was properly set back from the front property line.
13. The Board found that Mr. Conway testified that the edge of Chippewa Avenue does not match the edge of paving and there is approximately 14 feet from the front property line to Chippewa Avenue.
14. The Board found that Mr. Conway testified that he had difficulty locating the property marker because the property marker was hidden under a shrub.

15. The Board found that Mr. Conway testified that, at the time the roof was constructed over the deck, he believed the roof and deck complied with the front yard setback requirement.
16. The Board found that no parties appeared in support of or in opposition to the Application.
17. The Board tabled the Application until July 10, 2017, at which time the Board discussed and voted on the Application.
18. 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 unrebutted, 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 relied on a builder to construct a roof over his deck so as to improve the appearance of the home and to provide covered access to the home during inclement weather. The Property is unique because the front property line does not match the edge of paving. Rather, there is approximately 14 feet from the edge of paving to the front property line. If the front property line was at or close to Chippewa Avenue, the roof addition would not violate the front yard setback requirement. This mistake was reasonable because the property marker was actually hidden under a shrub thereby giving the false impression that the Property was larger than it actually is. This unique situation and physical circumstance has created an exceptional practical difficulty for the Applicant who seeks to retain the roof over his deck.
  - b. Due to the uniqueness of the Property and the situation, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The existing deck is covered by a roof and the Applicant is unable to retain it in compliance with the Sussex County Zoning Code. The testimony confirms that the covered deck is consistent with other covered decks in the neighborhood. The Board is convinced that the variance is necessary to enable the reasonable use of the Property as the variance will allow a reasonably sized covered deck to remain on the Property. The deck provides the Applicant with safe access to the house during inclement weather. The Board is convinced that the shape and location of this deck are reasonable, which is confirmed when reviewing the survey provided by the Applicant.
  - c. The exceptional practical difficulty was not created by the Applicant. The Applicant relied on his builder to construct the covered deck in compliance with the Sussex County Zoning Code only to discover years later that the deck actually encroached into the front yard setback area. The situation is unique because the property marker was hidden and the parties reasonably believed the front yard property line was closer to Chippewa Avenue. The unique situation and physical conditions of the Property have created the exceptional practical difficulty for the Applicant.
  - 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 Board is convinced that the covered deck will have no effect on the character of the neighborhood. The covered deck is similar to others in the neighborhood and likely enhances the neighborhood. Furthermore, 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. The lack of evidence is telling since the deck has been on the Property for 3 years.

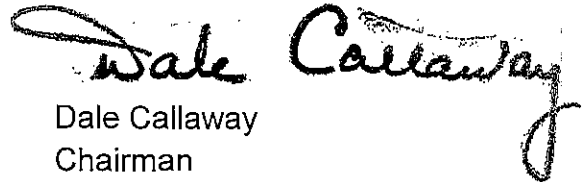
- e. The variance sought is the minimum variance necessary to afford relief and the variance requested represents the least modification possible of the regulation at issue. The Applicant has demonstrated that the variance sought will allow the Applicant to retain the covered deck on the Property.

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, Ms. Ellen Magee, Mr. John Mills, and Mr. Brent Workman. No Board Member voted against the Motion to approve the variance application. Mr. Norman Rickard did not participate in the vote on 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 August 22, 2017