

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: LEONARD CHATHAM MARSCH

(Case No. 11989)

A hearing was held after due notice on July 10, 2017. The Board members present were: Mr. Dale Callaway, Ms. Ellen Magee, Mr. John Mills, and Mr. Brent Workman.

Nature of the Proceedings

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

Findings of Fact

The Board found that the Applicant is seeking a variance of 1.7 feet from the ten (10) feet side yard setback requirement on the east side for an existing porch. This application pertains to certain real property located at the northeast corner of Loganberry Court and Loganberry Lane (911 Address: 101 Loganberry Court, Rehoboth Beach); said property being identified as Sussex County Tax Map Parcel Number 3-34-13.00-423.00.

1. The Board was given copies of the Application, a survey of the Property dated April 10, 2017, an aerial photograph of the Property, three (3) letters of support to the Application, and a portion of the tax map of the area.
2. The Board found that the Office of Planning & Zoning received three (3) letters in support of the Application and no correspondence in opposition to the Application.
3. The Board found that Eva Morrison 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.
4. The Board found that Mrs. Burton stated that the dwelling was constructed in 1979. The porch was constructed in 1982 and was later enclosed in 1989. Permits were issued for the porch and its later enclosure but no certificates of compliance were issued.
5. The Board found that Mrs. Burton stated that the Property is located in the Breezewood subdivision.
6. The Board found that Mrs. Burton stated that the exceptional practical difficulty is due to the uniqueness of the Property.
7. The Board found that Mrs. Burton stated that there is no possibility that the Property can be developed in strict conformity with the Sussex County Zoning Code and the variance is necessary to enable reasonable use of the Property.
8. The Board found that Mrs. Burton stated that the exceptional practical difficulty was not created by the Applicant.
9. The Board found that Mrs. Burton stated that the Applicant purchased the Property in April 2017 and a survey prepared for closing uncovered the encroachment. Ms. Morrison inherited the Property from her mother in 2016 and Ms. Morrison was previously unaware of the encroachment.
10. The Board found that Mrs. Burton stated that the variance will not alter the essential character of the neighborhood and the variance will not be detrimental to the public welfare. The Applicant and Ms. Morrison are unaware of any complaints about the location of the porch and neighbors have submitted letters supporting the Application.
11. The Board found that Mrs. Burton stated that there is a natural forested buffer on the perimeter of the Property.
12. The Board found that Mrs. Burton stated that the variance requested represents the minimum variance to afford relief and is the least modification possible of the regulation at issue.
13. The Board found that Ms. Morrison, under oath, affirmed the statements made by Mrs. Burton.

14. The Board found that no parties appeared in support of or in opposition to the Application.
15. 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 Property is clearly unique as it is a corner lot with an odd shape. The Property was created and developed many years ago and is located at the intersection of Loganberry Court and Loganberry Lane. The side yard adjacent to Loganberry Court is oddly shaped due to a cul-de-sac and this design is clearly shown on the survey. The unique shape of the Property has created an oddly shaped building envelope and an exceptional practical difficulty for the Applicant.
 - b. Due to the uniqueness of the Property, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The porch was constructed many years ago and the Applicant seeks to retain the porch on the same footprint but is unable to do so without violating the Sussex County Zoning Code. The Board is convinced that the variance is necessary to enable the reasonable use of the Property as the variance will allow the porch to remain on the Property. The Board is convinced that the shape and location of this porch 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 Property was created and developed many years ago by a prior owner and the Property has an unusual shape. The Applicant did not build the porch or create the size and shape of the lot. Rather, those conditions pre-existed the Applicant's acquisition of the Property. These unique physical conditions have resulted in a limited building envelope and 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 porch has been on the Property for many years without recorded complaints. Despite the longstanding location of the porch and notification to neighbors, no complaints were noted in the record about its location. Rather, the Board received letters supporting the Application. The Board also notes that a natural, forested buffer exists which blocks the porch from view. 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.
 - 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 an existing porch on the same footprint. No additions or modifications to the porch are proposed.

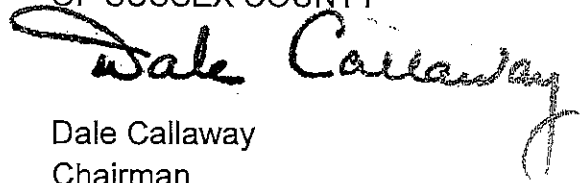
The Board granted the variance application finding that it met the standards for granting a variance.

Decision of the Board

Upon motion duly made and seconded, the variance application was approved. The Board Members in favor were Mr. Dale Callaway, 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 discussion or 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