

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: LEE THOMPSON & KRISTIN THOMPSON

(Case No. 12009)

A hearing was held after due notice on August 21, 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 rear yard setback requirement.

Findings of Fact

The Board found that the Applicants are seeking a variance of 4.8 feet from the twenty (20) feet rear yard setback requirement for a proposed three-season room. This application pertains to certain real property located on the northeast side of Woodland Way approximately 512 feet northwest of Woodland Circle (911 Address: 33213 Woodland Way, Lewes); said property being identified as Sussex County Tax Map Parcel Number 2-34-12.17-138.00. After a hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a portion of the tax map of the area, a survey of the Property dated June 9, 2017, minutes of Case No. 11684, a letter from the Angola by the Bay Property Owners Association, Inc., pictures, a building permit, and property assessment information.
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 Lee Thompson was sworn in to testify about the Application and submitted exhibits to the Board to review.
4. The Board found that Mr. Thompson testified that the Angola by the Bay Homeowners Association has approved the proposal and that the existing deck was approved for a variance in 2015. The previous owners obtained that variance.
5. The Board found that Mr. Thompson testified that the Applicants purchased the Property in 2016.
6. The Board found that Mr. Thompson testified that the Property has an unusual shape.
7. The Board found that Mr. Thompson testified that the dwelling was placed on the Property with a septic system prior to the installation of a central sewer system.
8. The Board found that Mr. Thompson testified that the area to the rear of the Property is common area owned by the homeowners association and that there are no residential properties which would be adversely affected by the addition.
9. The Board found that Mr. Thompson testified that the dwelling was built in 1982 and the dwelling was originally constructed as a "salt box" home. Any construction to the sides or upward would result in additional variances and removal of mature vegetation which would be very costly.
10. The Board found that Mr. Thompson testified that the difficulty is created by the Property's small size and unusual shape. The Applicants did not create the size and shape of the Property.
11. The Board found that Mr. Thompson testified that the existing deck will serve as the foundation for the proposed three-seasons room.
12. The Board found that Mr. Thompson testified that the proposed three seasons room will be attractive and add value to the existing home.
13. The Board found that Mr. Thompson testified that the variance will not alter the essential character of the neighborhood and that minor encroachments in Angola by the Bay are common.

14. The Board found that Mr. Thompson testified that the addition will not extend farther into the rear yard than the existing deck.
15. The Board found that Mr. Thompson testified that mosquitos are a problem in the community and that the additional space is needed for the Applicants' growing family.
16. The Board found that no parties appeared in support of or in opposition to the Application.
17. 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 unusual shape which is clearly evident when reviewing the survey provided by the Applicants. The front of the Property is much narrower than the rear of the Property. The front and rear property lines are also curved. This shape greatly reduces the building envelope on the Property and has created an exceptional practical difficulty for the Applicants who seek to construct a three seasons room over an existing deck 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 shape which limits the building envelope. The Applicants seek to construct a three seasons room of a reasonable size but are 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 Applicants to construct a three seasons room of reasonable size on the Property. The Board is convinced that the shape and location of this room are also reasonable, which is confirmed when reviewing the survey provided by the Applicants. The Board also notes that the Property is subject to mosquitoes and other insects which makes it difficult to reasonably use outdoor space at certain times.
 - 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 Applicants also did not place the deck on the Property. Rather, a prior owner built the deck and obtained a variance from the Board. The Applicants seek to construct a room over the deck but are unable to do so due to the lot's unique characteristics. The Board also notes that the Angola by the Bay community has an unusual history with regard to septic systems which led to unique development of lots therein, including this property. Ultimately, the unique characteristics of the Property are clear when reviewing the survey. The Board is convinced that the exceptional practical difficulty was not created by the Applicants but was created by the lot's unique characteristics.
 - 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 room will have no effect on the character of the neighborhood. The room will be located over an existing deck which has been on the Property for quite some time and, despite the longstanding location of the deck, no complaints were noted in the record about its location. Additionally, the homeowners association has indicated its support of the Application. 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 Board also notes that the rear yard of the Property is adjacent to common area owned by the homeowners association so the encroachment should have little to no impact on neighboring properties.

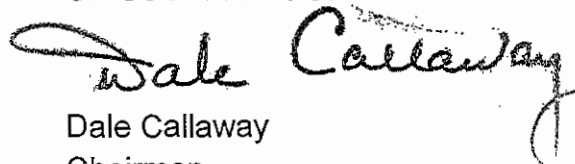
- e. The variance sought is the minimum variance necessary to afford relief and the variance requested represents the least modification possible of the regulation at issue. The Applicants have demonstrated that the variance sought will allow the Applicants to construct a reasonably sized room over an existing deck on the Property. The room will not extend farther into the rear yard setback area than the existing deck.

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, 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 October 17, 2017