

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: MICHAEL CURRY

(Case No. 12047)

A hearing was held after due notice on November 6, 2017. The Board members present were: Mr. Dale Callaway, Ms. Ellen Magee, Mr. Bruce Mears, Mr. John Mills, 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 1.8 feet from the five (5) feet rear yard setback requirement for a shed, a variance of 1.3 feet from the five (5) feet side yard setback requirement on the east side for a shed, a variance of 4.3 feet from the ten (10) feet rear yard setback requirement for an existing enclosed porch addition, and a variance of 8.3 feet from the ten (10) feet rear yard setback requirement for an existing set of steps. This application pertains to certain real property located at the north side of East Quail Trail, approximately 750 feet east of Mallard Drive (911 Address: 125 East Quail Trail, Lewes); said property being identified as Sussex County Tax Map Parcel Number 3-35-8.00-67.00.

1. The Board was given copies of the Application, a portion of the tax map of the area, an aerial photograph of the Property, a Certificate of Compliance, a building permit, a violation notice, and a survey dated August 25, 2017.
2. The Board found that the Office of Planning & Zoning received one letter in support of and no correspondence in opposition to the Application.
3. The Board found that Michael Curry was sworn in to testify about the Application. Mr. Curry submitted exhibits to the Board to review.
4. The Board found that Mr. Curry testified that the neighborhood has restrictive covenants but there is no rear yard setback requirement in the covenants. When he inquired about the rear yard setback requirement with his homeowners association president, he was told that the rear yard setback is 6 feet because the community is adjacent to retired railroad tracks. Mr. Curry was unaware of Sussex County setback requirements which supersede the neighborhood setback requirements.
5. The Board found that Mr. Curry testified that he obtained a permit and Certificate of Compliance for the shed and was unaware of the encroachment until the violation notice was received.
6. The Board found that Mr. Curry testified that the porch has a poured concrete floor.
7. The Board found that Mr. Curry testified that neighbors supports this Application.
8. The Board found that Mr. Curry testified that the variances will not negatively affect the Property or property values.
9. The Board found that Mr. Curry testified that the shed is located on cinder blocks.
10. The Board found that Mr. Curry testified that the homeowners association president incorrectly advised him that the Sussex County setback requirements did not apply to the shed.
11. The Board found that Mr. Curry testified that his builder obtained the permit for the porch but he obtained the permit for the shed.
12. The Board found that Mr. Curry testified that he made an error when determining where to place the shed but he relied on his builder to build the porch and steps in compliance with Sussex County Code.

13. The Board found that Mr. Curry testified that there is a wooded berm between his rear property line and the railroad which makes the rear of the Property appear larger than it actually is.
14. The Board found that Mr. Curry testified that the variances will not alter the essential character of the neighborhood.
15. The Board found that Mr. Curry testified that the porch is difficult to see from the front of the Property and there are no homes to the rear of the Property. On the other side of the railroad tracks, is a multi-acre horse farm.
16. The Board found that Mr. Curry testified that the shed will have no impact on the neighborhood and the shed is similar to other sheds in the area.
17. The Board found that Mr. Curry testified that the neighbor to the east side of the Property does not object to the side yard variance request.
18. The Board found no parties appeared in support of or in opposition to the Application.
19. 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 for the variances for the porch and steps only 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 as it is a lot located adjacent to lands previously used for a railroad and the rear yard is separated by a wooded berm which makes the rear yard appear larger than it actually is. The situation is also unique because the Applicant relied on his builder to construct the porch and steps in compliance with the Sussex County Zoning Code only to later find out that the structures did not comply with setback requirements. These unique conditions have created an exceptional practical difficulty for the Applicant who seeks to retain a porch and steps on the lot.
 - b. Due to the uniqueness of the lot and situation, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The rear of the Property is quite unique due to its proximity to lands used as a railroad. The Applicant seeks to retain a porch and steps of reasonable size but is unable to do so without violating the Sussex County Zoning Code. The Board is convinced that the variances for the porch and steps are necessary to enable the reasonable use of the Property as the variances will allow a reasonably sized porch and steps to remain on the Property. The Board is convinced that the shape and location of the porch and steps are also 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 did not create the lot's unique physical conditions and the Applicant relied on his builder to construct the porch and steps in compliance with the Sussex County Zoning Code only to later discover the setback violations. 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 builder error
 - d. The variances for the porch and steps 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 porch and steps will have no effect on the character of the neighborhood. The rear of the Property is adjacent to a wooded berm separating lands formerly used as railroad tracks. It is unlikely that the encroachment is even noticeable to the owner of the property to the rear and 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. The Board also notes that the neighbors appear to support the Application.

- e. The variances sought for the porch and steps are the minimum variances necessary to afford relief and the variances requested represent the least modifications possible of the regulations at issue. The Applicants have demonstrated that the variances sought will allow the Applicants to retain the porch and steps on the Property. No additions or modifications to those structures are proposed.

20. 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 failed to meet the standards for granting a variance as to the shed only. The findings below further support the Board's decision to deny the Application for the rear addition.

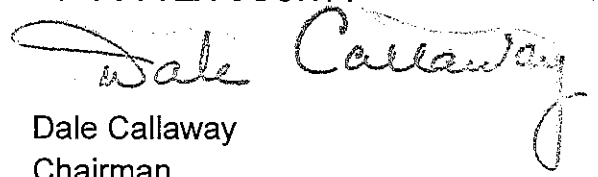
- a. The Board finds that the shed can be constructed in strict conformity with the Sussex County Zoning Code and that the variances for the shed are not necessary for the reasonable use of the Property. The Applicant admitted that the shed could be moved into compliance with the Sussex County Zoning Code and the survey shows that there is room on the Property for the shed to otherwise fit within the building envelope. The shed is also on cinderblocks which can more easily be moved into compliance.
- b. Since the variances for the shed are not necessary to enable the reasonable use of the Property, the Board also finds that the variances for the shed are not the minimum variances necessary to afford relief. Furthermore, the Board finds that no variance is necessary to afford relief since the shed can be moved into strict conformity with the Sussex County Zoning Code.

The Board granted the variance application for the porch and steps finding that it met the standards for granting a variance and denied the variance application for the shed finding that it did not meet the standards for granting a variance.

Decision of the Board

Upon motion duly made and seconded, the variance application was approved in part and denied in part. The Board Members in favor of the motion to approve the variances for the porch and steps and to deny the variances for the shed were Mr. Dale Callaway, Ms. Ellen Magee, Mr. Bruce Mears, Mr. John Mills, and Mr. Brent Workman. No Board Member voted against the Motion to approve the variance application in part and to deny the variance application in part.

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 January 9, 2018