

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: CATHERINE F. CHRISTIANSEN

(Case No. 12077)

A hearing was held after due notice on January 8, 2018. The Board members present were: Mr. Dale Callaway, Ms. Ellen Magee, Mr. Bruce Mears, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for variances from the corner front yard and rear yard setback requirements.

Findings of Fact

The Board found that the Applicant is seeking a variance of 7.6 feet from the twenty (20) feet rear yard setback requirement for an existing sunroom, a variance of 3.9 feet from the fifteen (15) feet corner front yard setback requirement along Woodland Circle for an existing dwelling, a variance of 18 feet from the twenty (20) feet rear yard setback requirement for an existing handicap ramp, and a variance of 8.5 feet from the fifteen (15) feet corner yard setback requirement along Woodland Circle for an existing handicap ramp. This application pertains to certain real property located on the east side of Boat Dock Court East at the corner of Boat Dock Court, Boat Dock Court East, and Woodland Circle (911 Address: 33769 Woodland Circle, Lewes); said property being identified as Sussex County Tax Map Parcel Number 2-34-11.20-273.00.

1. The Board was given copies of the Application, a survey of the Property dated October 13, 2017, assessment information, an aerial photograph of the Property, and a portion of the tax map of the area.
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 John McGee was sworn in to testify about the Application.
4. The Board found that Mr. McGee testified that the Property is owned by his mother and is under contract to be sold. His mother lives in an assisted living facility.
5. The Board found that Mr. McGee testified that the original dwelling was constructed in 1972 with proper permits and the porch addition was placed with proper permits as well.
6. The Board found that Mr. McGee testified that the structures were believed to conform to Sussex County zoning requirements and homeowner association covenants.
7. The Board found that Mr. McGee testified that the Property is irregularly shaped.
8. The Board found that Mr. McGee testified that the addition has been on the Property since 1984 / 1989 with proper permits received.
9. The Board found that Mr. McGee testified that the Applicant would suffer a hardship if the structures were removed.
10. The Board found that Mr. McGee testified that the owners followed all rules and regulations when placing the dwelling and addition. Certificates of compliance were received.
11. The Board found that Mr. McGee testified that the variances will not alter the essential character of the neighborhood.
12. The Board found that Mr. McGee testified that the Property borders common area owned by the homeowners association and the common area is located on the side of the Property closest to the encroachments.
13. The Board found that Mr. McGee testified that the structures have not adversely affected neighboring properties.

14. The Board found that Mr. McGee testified that the ramp was installed because his mother's husband had mobility issues and needed the ramp to access the home. The buyer intends to keep the ramp.
15. The Board found that Mr. McGee testified that neighbors have not complained about the encroachments and the encroachments do not pose any visibility concerns with traffic along Woodland Circle.
16. The Board found that Mr. McGee testified that the Property is served by central water and sewer but was previously served by well and septic. The location of the well and septic may have led to the placement of the sunroom in its present location.
17. The Board found that one (1) party appeared in support of the Application and no parties appeared in opposition to 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 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 as it is a corner lot with a curved property line at the intersection of Woodland Circle and Boat Dock Court East. The dwelling was constructed to face the intersection rather than Boat Dock Court East, which is considered the front yard of the Property. This unique development of the Property has limited the area where other structures could reasonably be located on the lot. If the home were placed parallel to Boat Dock Court East, there would be more room for structures on the lot. The Property is also unique because it is a small lot with a small building envelope. This building envelope is further limited by the corner yard setback requirements and was also previously limited by the location of the well and septic system on the Property. These unique physical conditions have created an exceptional practical difficulty for the Applicant who seeks to retain the dwelling, sunroom, and handicap ramp on the Property.
 - b. Due to the uniqueness of the Property, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Applicant seeks to retain the dwelling, sunroom, and handicap ramp 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 dwelling, sunroom, and handicap ramp to remain on the Property. The Board is convinced that the shape and location of the dwelling, sunroom, and handicap ramp 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. There was no evidence that the Applicant created the lot or developed it with the dwelling facing the intersection rather than Boat Dock East Court. This unique condition has created an unusually shaped and limited building envelope which is further limited by the corner yard setback requirement. These conditions have created the exceptional practical difficulty for the Applicant who seeks to retain a reasonably sized dwelling, sunroom, and handicap ramp on the lot. The Board also notes that the Applicant's husband suffered from ambulatory problems necessitating the handicap ramp and these conditions do not appear to be self-created.
 - 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 dwelling, sunroom, and handicap ramp will have no

effect on the character of the neighborhood. The structures have been on the Property for some time and, despite notice to neighbors, no complaints were noted in the record about the location of these structures. Furthermore, 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.

- 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 dwelling, sunroom, and handicap ramp on the Property. No additions or modifications to those existing structures are proposed.
- f. The Board also finds that the approval of the variances for the handicap ramp represent a reasonable accommodation.

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. Bruce Mears, and Mr. Brent Workman. No Board Member voted against the Motion to approve the variance application. Mr. John Mills 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 March 6, 2018