

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: DANIEL STURGIS

(Case No. 12146)

A hearing was held after due notice on May 21, 2018. The Board members present were: Mr. Dale Callaway, Mr. Bruce Mears, Ms. Ellen Magee, Mr. John Mills, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for a variance from the rear yard setback for existing and proposed structures.

Findings of Fact

The Board found that the Applicant is seeking a variance of 3.8 feet from the fifteen (15) feet rear yard setback requirement for a proposed screened porch. This application pertains to certain real property located on the west side of Angola Road East, approximately 437 feet north of Woodland Circle. (911 Address: 22892 Angola Road East, Lewes); said property being identified as Sussex County Tax Map Parcel Number 2-34-11.20-25.00.

1. The Board was given copies of the Application, minutes for Case No. 6666, a letter of support from the Angola by the Bay Property Owners Association, a survey of the Property dated April 6, 1998, 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 Daniel Sturgis and Jake Murdick were sworn in to testify about the Application sworn in to testify about the Application.
4. The Board found that Mr. Sturgis testified that he purchased the Property in August 2017. At that time, the Property was improved by an existing deck. He wants to enclose a portion of the existing deck to better enjoy the rear yard.
5. The Board found that Mr. Sturgis testified that the screened in porch will cover about one-third of the deck that is located closest to the rear.
6. The Board found that Mr. Sturgis testified that there is common area adjacent to the rear of the Property.
7. The Board found that Mr. Sturgis testified that the Property is unique as it is small and shallow.
8. The Board found that Mr. Sturgis testified that his neighbors do not object to the variance.
9. The Board found that Mr. Sturgis testified that the difficulty was not created by the Applicant.
10. The Board found that Mr. Sturgis testified that the variance requested is the minimum variance necessary to afford relief.
11. The Board found that Mr. Murdick testified that there will no longer be steps so there is no need for a step variance.
12. The Board found that no parties appeared in support of or in opposition to the Application.
13. 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 size. The Property is an undersized lot adjacent to common area in the rear. The unique characteristics of this Property limit the buildable area available to the Applicant and have created an exceptional practical difficulty for the Applicant who seeks to build a screen porch on the lot. The Property is also unique because the rear yard is adjacent to common area for the community thereby giving the false impression that the rear yard is larger than it actually is.
- 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 size and the buildable area thereof is limited due to its size. The Applicant seeks to build a porch of reasonable size 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 a reasonably sized porch to be constructed on the Property. The Board is convinced that the shape and location of the porch 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 unusual size of the Property. The Applicant only recently acquired the lot and the lot was developed prior to the Applicant's ownership thereof. The unique lot size has resulted in a limited building envelope on the Property and the small building envelope has created the exceptional practical difficulty. 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 Applicant but was created the lot's unique characteristics. The Board also notes that the Property was developed by an existing deck which encroached into the rear yard setback area; though a prior owner obtained a variance for that encroachment. The Applicant seeks to build the porch on top of the existing deck.
- 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 porch will have no effect on the character of the neighborhood. The porch will be placed on top of an existing deck which has been on the Property for approximately 20 years. No complaint was noted in the record about the rear yard encroachment and no evidence was presented that the variance would somehow alter the essential character of the neighborhood. Rather, the Board received a letter of support from the homeowners association. The Board also notes that the rear of the yard is adjacent to common area.
- 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 construct a reasonably sized porch on the Property. The porch will encroach no farther into the setback area than the existing deck and the steps to the rear of the existing deck will be removed thereby reducing the size of the rear yard encroachment.

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, Mr. John Mills, and Mr. Brent Workman. No Board Member voted against the Motion to approve the variance application.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY



John Mills
Chairman

If the use is not established within two (2) years from the date below the application becomes void.

Date August 7, 2018.