

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: DIANE M. KNIZER

(Case No. 12167)

A hearing was held after due notice on July 23, 2018. 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 rear yard setback requirement for an existing structure.

Findings of Fact

The Board found that the Applicant is seeking a variance of 4.1 feet from the twenty (20) feet rear yard setback requirement for an existing screened porch and a variance of 6.4 feet from the twenty (20) rear yard setback requirement for existing steps. This application pertains to certain real property located on the south side of Frontier Road approximately 350 feet west of Mulberry Knoll Road (911 Address: 34756 Frontier Road, Lewes); said property being identified as Sussex County Tax Map Parcel Number 3-34-18.00-141.00.

1. The Board was given copies of the Application, a survey of the Property dated January 25, 2018, engineering and design plans, photographs, letters supporting the application, a building permit application, 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 Diane Knizer and Jeffrey Burton were sworn in to testify about the Application. Shannon Carmean Burton, Esquire presented the Application on behalf of the Applicant and submitted exhibit booklets to the Board.
4. The Board found that Mrs. Burton stated that the Applicant purchased the Property in 2013 as a second home and moved to the residence in 2016. The home has since been modernized and the Applicant worked with Lane Builders and her architect for the remodeling. As part of the remodeling, an existing deck was converted into a porch.
5. The Board found that Mrs. Burton stated that the porch was slightly larger than originally planned because the builder used the same footers that existed for the existing deck. The work was approved by the building inspector but a Certificate of Compliance was not issue.
6. The Board found that Mrs. Burton stated that the rear of the Property is developed with mature trees which made it difficult to ascertain the rear property line.
7. The Board found that Mrs. Burton stated that the lot is unique because of the lot shape. The Property is wider than deep and only has a 50 feet deep building envelope.
8. The Board found that Mrs. Burton stated that the house was placed back farther than the required front yard setback.
9. The Board found that Mrs. Burton stated that the Property cannot be developed in compliance with the Sussex County Zoning Code without removing half of the screen porch and making it so small to be unusable.
10. The Board found that Mrs. Burton stated that this situation was not created by the owner but by the builder and architect. The Applicant relied on the builder and architect to follow the zoning codes.
11. The Board found that Mrs. Burton stated that the exceptional practical difficulty is due to the depth of the lot and the existing house.

12. The Board found that Mrs. Burton stated that the variances will not be detrimental to the public welfare and the variances will not alter the essential character of the neighborhood.
13. The Board found that Mrs. Burton stated that the porch is on the same footprint as the deck.
14. The Board found that Mrs. Burton stated that the Applicant has received no complaints about the porch and that the porch adds value to the neighborhood.
15. The Board found that Mrs. Burton stated that the variances requested are the minimum variances necessary to afford relief.
16. The Board found that Mr. Burton of Lane Builders and Ms. Knizer affirmed the statements made by Mrs. Burton as true and correct.
17. The Board found that Mr. Burton testified that his company made a mistake. The building permit was obtained by Lane Builders. The framer realized that the footings for the existing deck could be used for the proposed porch and thought that using those footers rather than following the original plans would provide the Applicant with a better product.
18. The Board found that Mr. Burton testified that he did not know if they were the exact same steps from the original deck, but the steps occupied almost the same footprint as they original steps.
19. The Board found that Mr. Burton testified that the Cypress trees in the rear of the property are owned by the neighbor and that the density of the trees make it difficult to define the lot line for the rear of the property.
20. The Board found that Ms. Knizer testified that she hired an architect and that the architect did not realize that putting a roof on the existing deck would create a setback issue.
21. The Board found that Ms. Knizer testified that she reached out several times to her neighbor to the rear but the owner of Lot 61 is a part-time resident. She has received no feedback from that owner about the Application.
22. The Board found that no parties appeared in support of or in opposition to the Application.
23. 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 shape. The lot is wider than it is deep. This shape has created an unusual building envelope. The rear of the property is adjacent to lands with thick Leland Cypress trees. These trees make it difficult to ascertain the location of the rear property line and exacerbate the exceptional practical difficulty. These conditions limit the buildable area available to the Applicant and 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, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property has a unique shape and the buildable area thereof is limited due to these conditions. The Applicant seeks to retain a porch and steps 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 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 unusual shape of the Property. The Applicant only recently acquired the Property and remodeled the existing home. The Property has a unique shape which 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 Applicant relied on professionals to design the porch and steps in compliance with all regulations only to later discover these encroachments.
- 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 porch and steps will have no effect on the character of the neighborhood. The porch and steps are located to the rear of the Property and the border between the Property and the neighbor to the rear is covered with dense Leland Cypress trees. There was no evidence that the location of the porch and steps in the rear yard setback area would somehow affect the neighborhood. Notably, no complaint was noted in the record about the rear yard encroachments and no evidence was presented that the variances would somehow alter the essential character of the neighborhood. Rather, the Applicant submitted numerous letters in support of the Application. The Board also notes that the area where the porch is to be located is in the same area as a prior deck on the Property.
- e. The variances sought are the minimum variances necessary to afford relief and the variances requested represent the least modifications possible of the regulation at issue. The Applicant has demonstrated that the variances sought will allow the Applicant to retain a reasonably sized porch and steps on the Property. No additions or modifications to the porch and steps 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. 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 September 18, 2018.