

**BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY**

**IN RE: CHRISTINE FIGURELL**

**(Case No. 12183)**

A hearing was held after due notice on August 20, 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 a proposed structure.

Findings of Fact

The Board found that the Applicant is seeking a variance of 14.5 feet from the fifteen (15) feet rear yard setback requirement for a proposed deck and a variance of 14.2 feet from the fifteen (15) feet rear yard setback requirement for a proposed deck. This application pertains to certain real property located on the north side of Poplar Drive, approximately 172 feet northwest of Woodland Circle (911 Address: 32813 Poplar Drive, Lewes); said property being identified as Sussex County Tax Map Parcel Number 2-34-11.20-107.00.

1. The Board was given copies of the Application, a survey of the Property dated April 20, 2018, a letter from the Applicants, minutes for Case No. 7401, 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 Darlene Gilbert was sworn in to testify about the Application.
4. The Board found that Ms. Gilbert stated that the variances are for a deck to the rear of the dwelling. The deck will be placed over an existing concrete patio. The steps for the deck will be located within the building envelope.
5. The Board found that Ms. Gilbert stated that the Property is unique because the house is set so far back on the lot. At the time the house was built, a septic field was located in front of the house and the septic system had to be at least 150 feet from a well which was located in the common area to the rear. The location of the septic field limited the size and location of the house and resulted in the house being located farther to the rear of the lot.
6. The Board found that Ms. Gilbert stated that the exceptional practical difficulty was not created by the Applicant.
7. The Board found that Ms. Gilbert stated that the deck can only be developed as such because there is no other area to place a deck that would meet setback requirements.
8. The Board found that Ms. Gilbert stated that the Applicant did not create the shape and size of the house and had no control over the placement of the septic field.
9. The Board found that Ms. Gilbert stated that the variances will not affect the character of the neighborhood but will enhance the neighborhood.
10. The Board found that Ms. Gilbert stated that the variances requested are the minimum variances necessary to afford relief.
11. The Board found that Ms. Gilbert stated that the neighbors and homeowners' association support the Application.
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 and the location of a septic field. The lot consists of 5,349 square feet and is a small lot. The size of the lot creates a limited building envelope. This building envelope is further limited since the site was improved by a septic system that had to be located in front of the dwelling within the building envelope. As such, the small building envelope was further reduced and the dwelling had to be located to the rear of the lot. These conditions limit the buildable area available to the Applicant and have created an exceptional practical difficulty for the Applicant who seeks to construct a 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 size and the buildable area thereof is limited due to the size of the lot and the location of a septic system. The Applicant seeks to construct a deck 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 deck to be constructed on the Property. The Board is convinced that the shape and location of the deck 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 or direct the location of the septic system. These unique conditions have 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 by the lot's unique characteristics.
- 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 deck will have no effect on the character of the neighborhood. The deck will be located to the rear of the Property and the rear of the Property is adjacent to common area owned by the homeowners' association. There was no evidence that the location of the deck in the rear yard setback area would somehow affect the neighborhood. Notably, the deck will be located on top of an existing concrete patio and will be no closer to the property line than the patio. No evidence was presented that the variances would somehow alter the essential character of the neighborhood. Rather, the Applicant indicated that neighbors and the homeowners' association support the Application.
- 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 construct a reasonably sized deck on the Property. The deck will be no closer to the rear property line than the existing patio.

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 October 16, 2018.