

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: ENRICO LACHMANN

(Case No. 12256)

A hearing was held after due notice on January 28, 2019. 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 3.5 feet from the ten (10) feet rear yard setback requirement and a variance of 3.4 feet from the ten (10) feet rear yard setback requirement for existing second-floor platform and steps. This application pertains to certain real property located on the southwest corner of Oak Drive and Magnolia Drive in the Angola Neck Park subdivision (911 Address: 22836 Magnolia Drive, Lewes); said property being identified as Sussex County Tax Map Parcel Number 2-34-12.14-44.01.

1. The Board was given copies of the Application, a survey of the Property dated October 4, 2018, a violation notice from the Planning & Zoning Department, 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 Jason Lachman was sworn in to testify about the Application.
4. The Board found that Mr. Lachman testified that there was confusion regarding the setback requirements as this is a second-floor structure. He noted that if the steps had been to the first-floor of the structure, the setback requirement would have been 5 feet. The steps provide access to the second-floor attic.
5. The Board found that Mr. Lachman testified that the neighboring lot to the rear is undeveloped and wooded.
6. The Board found that Mr. Lachman testified that the deck measures 8 feet by 8 feet.
7. The Board found that Mr. Lachman testified that the uniqueness of the property is the corner lot and the Property cannot be otherwise be developed as the steps are already in place.
8. The Board found that Mr. Lachman testified that the need for the variances was not created by the Applicant because he expected the builder to follow setbacks and thought they were in compliance. The builder obtained the permit and the encroachments were discovered after the construction as completed.
9. The Board found that Mr. Lachman testified that the variances will not alter the essential character of the neighborhood and the neighboring properties are owned by family.
10. The Board found that Mr. Lachman testified that the variances requested are the minimum variances to request relief and bring the steps and landing into compliance. No other changes are proposed.
11. The Board found that no one appeared in support of or in opposition to the Application.
12. The Board tabled the Application until February 4, 2019, at which time the Board discussed and voted on 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 weighed and considered, the Board determined that the application failed to meet the standards for granting a variance. The findings below further support the Board's decision to deny the Application.
- a. The Applicant failed to prove that the steps and landing could not be built in strict conformity with the Sussex County Zoning Code. The Property is a rectangularly shaped lot and the home is set back a significant distance from Oak Drive, Magnolia Drive, and the west side property line. The steps and platform were only recently located on the Property and there was no evidence that the Applicant could not move those structures into compliance. The Applicant presented no evidence which convinced the Board that the steps and landing could not be located elsewhere on the Property to meet the setback requirements. Furthermore, assuming *arguendo* that the steps and landing could not be located elsewhere, the Applicant failed to convince the Board that the steps and landing were necessary to enable the reasonable use of the Property. For these reasons, the Board finds that the Property could be developed in strict conformity with the Code and that the variance is not necessary to enable reasonable use of the Property.
 - b. Prior to placing the steps and platform on the lot, the Applicant knew or should have known the rear yard setback requirement as the setback requirement was clearly shown on the building permit. While the Applicant claims that this was due to builder error, the Applicant did not convince the Board that this error was unavoidable or that the mistake could not be remedied. The exceptional practical difficulty with regard to the steps and platform appears to have nothing to do with some unique physical characteristic of the Property and, instead, appears to be created by the Applicant or her agents.
 - c. The Applicant also failed to convince the Board that the variance for the dwelling is the minimum variance necessary to afford relief. As noted in Paragraph 13(a) above, the Applicant could place the steps and platform in compliance with the Code. As such, the variances for the steps and platform are not the minimum variances necessary to afford relief.

The Board denied the variance application finding that it failed to meet the standards for granting a variance.

Decision of the Board

Upon motion duly made and seconded, the variance application was denied. The Board Members in favor of the Motion to Deny were Mr. Dale Callaway, Ms. Ellen Magee, Mr. John Mills, and Mr. Brent Workman. No Board Member voted against the Motion to deny the variance application. Mr. Bruce Mears did not participate in the vote on this 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 March 19, 2019.