

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: MICHAEL BECK & DONNA BECK

(Case No. 12336)

A hearing was held after due notice on July 15, 2019. The Board members present were: Dr. Kevin Carson, Mr. Jeff Chorman, Ms. Ellen Magee, Mr. John Williamson, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for variances from the rear yard setback requirement for proposed structures.

Findings of Fact

The Board found that the Applicants are requesting a variance of 6 feet from the ten (10) feet rear yard setback requirement for a proposed screened porch, a variance of 8 feet from the ten (10) feet rear yard setback requirement for a proposed uncovered deck, and a variance of 8 feet from the ten (10) feet rear yard setback requirement for proposed steps. The property is located on the north side of William Dorsey Street approximately 595 feet west of Silo Boulevard in the Lewes Crossing subdivision (911 Address: 14503 William Dorsey Street, Lewes); said property being identified as Sussex County Tax Map Parcel Number 3-34-5.00-1438.00. After a hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, an architectural modification application to the Lewes Crossing POA, drawings of the proposed structures, a survey of the Property dated May 13, 2015, a business license and insurance information, construction proposals, pictures, 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 one (1) letter in support of the Application and no correspondence in opposition to the Application.
3. The Board found that Michael Beck was sworn in to testify about the Application.
4. The Board found that Mr. Beck testified that the Property is unique as it is small and has an odd shape with a curved property line.
5. The Board found that Mr. Beck testified that the Property sits adjacent to the community clubhouse and is located on a cul-de-sac.
6. The Board found that Mr. Beck testified that the Property cannot otherwise be developed without a variance and that the only place to add a screened porch is on the rear of the home.
7. The Board found that Mr. Beck testified that the exceptional practical difficulty was not created by the Applicant as, when he purchased the home, he saw 50 – 60 feet behind the home and did not realize that the rear property line was so close to the dwelling. The rear of the house is only 1 foot from the setback line.
8. The Board found that Mr. Beck testified that the rear of the house faces a retention pond and walking path. The house is 69 feet from the walking path and the nearest home to the rear of his property is 213 feet away.
9. The Board found that Mr. Beck testified that his neighbors do not object to the Application.
10. The Board found that Mr. Beck testified that his neighbor's house is 20 feet closer to the road.
11. The Board found that Mr. Beck testified that the seller did not disclose where the rear property line was located when he purchased the home in 2018.
12. The Board found that Mr. Beck testified that the open space to the rear of the lot is owned by the homeowners association.

13. The Board found that Mr. Beck testified that the variances will not alter the essential character of the neighborhood as there are 11 homes in close proximity with screened porches.
14. The Board found that Mr. Beck testified that the porch will be small and will measure 10 feet by 25 feet and is narrow.
15. The Board found that Mr. Beck testified that his father-in-law, who is 83 years old, likes to sit in a screened porch.
16. The Board found that Mr. Beck testified that there are large mosquitos in the rear yard because the retention pond attracts bugs.
17. The Board found that Mr. Beck testified that the variances requested are the minimum variances to allow for a relatively narrow porch and small grilling deck.
18. The Board found that Mr. Beck testified that he cannot build these structures in the side yards.
19. The Board found that Mr. Beck testified that the homeowners association does not object to the request but he is still going through the HOA approval process.
20. The Board found that Mr. Beck testified that the steps come from the deck.
21. The Board found that no one appeared in support of or in opposition to the Application.
22. The Board tabled its decision until August 5, 2019, at which time the Board discussed and voted on 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 as it is an undersized lot with a unique shape. The lot consists of only 7,287 square feet as is clearly shown on the survey. The lot's unique conditions limit the buildable area available to the Applicants and have created an exceptional practical difficulty and an unnecessary hardship for the Applicants who seek to construct a screen porch, deck, and steps on the lot. The situation is also unique as mosquitoes are a problem and make it difficult for the Applicants to effectively use outdoor space. The screen porch affords them with functional outdoor space.
 - b. The unnecessary hardship and exceptional practical difficulty are not being created by the provisions of the Sussex County Zoning Code.
 - c. 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 shape and the buildable area thereof is limited due to the size and shape of the lot. The Applicants seek to construct a screen porch, deck, and steps but are 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 screen porch, deck, and steps to be constructed on the Property. The Board is convinced that the shape and location of these structures are also reasonable, which is confirmed when reviewing the survey provided by the Applicants. The Board also notes that the porch is necessary for the reasonable use of the Property due to the mosquito problem on the site.
 - d. The unnecessary hardship and exceptional practical difficulty were not created by the Applicants. The Applicants did not create the unusual size and shape of the Property or create the mosquito problem. The unique size and shape of the Property are clear when reviewing the survey. The Board is convinced that the unnecessary hardship and exceptional practical

difficulty were not created by the Applicants but was created by the lot's unique characteristics.

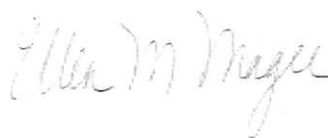
- e. The variances will not alter the essential character of the neighborhood nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare. The Board is convinced that the structures will have no effect on the character of the neighborhood. The structures will be located to the rear of the Property near common area owned by the homeowners association. As such, the encroachment is likely unnoticeable without a survey. There was no evidence that the location of the structures in the rear yard setback area would somehow affect the neighborhood and no evidence was presented that the variances would somehow alter the essential character of the neighborhood. The Board also notes that there are other porches in the neighborhood and that the Applicants will have to go through an approval process with the homeowners association as well and this process will afford the community further opportunity to opine on the request.
- f. 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 Applicants have demonstrated that the variances sought will allow the Applicants to construct a reasonably sized screen porch, deck, and steps on the Property. The porch is a shallow structure so as to minimize the encroachment into the setback area.
- g. The condition or situation of the Property and the intended use of the Property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the Sussex County Zoning Code.

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 Dr. Kevin Carson, Mr. Jeffrey Chorman, Ms. Ellen Magee, and Mr. Brent Workman. Mr. John Williamson voted against the Motion to approve the variance application.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY



Ellen M. Magee
Chair

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

Date October 8, 2019