

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: CHRISTOPHER LUXENBERGER & CLAUDIA LUXENBERGER

(Case No. 12361)

A hearing was held after due notice on September 16, 2019. The Board members present were: Dr. Kevin Carson, Ms. Ellen Magee, Mr. John Williamson, and Mr. Brent Workman.

Nature of the Proceedings

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

Findings of Fact

The Board found that the Applicants are requesting a variance of 5.1 feet from the ten (10) feet rear yard setback requirement for a proposed addition. The application pertains to certain real property located on the north side of Anchor Watch Loop approximately 225 feet west of Wild Goose Way within the Marina at Peppers Creek subdivision (911 Address: 31190 Anchor Watch Loop, Dagsboro); said property being identified as Sussex County Tax Map Parcel Number 2-33-7.00-229.00. After a public hearing, the Board made the following findings of fact.

1. The Board was given copies of the Application, a survey of the Property dated March 6, 2012, a drawing of the proposed addition, 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 no correspondence in support of or in opposition to the Application.
3. The Board found that Claudia Luxenberger and James Timmons were sworn in to testify about the Application. Ms. Luxenberger submitted exhibits to the Board.
4. The Board found that Ms. Luxenberger testified that she wishes to place a three-season room on the existing deck. The room will measure 12 feet deep by 14 feet wide.
5. The Board found that Ms. Luxenberger testified that the lot is shallow and is unique for this community.
6. The Board found that Ms. Luxenberger testified that the addition cannot be built without the variance.
7. The Board found that Ms. Luxenberger testified that the need for the variance was not created by the Applicants as they were unaware of the need for addition and the limited space.
8. The Board found that Ms. Luxenberger testified that the variance will not affect the essential character of the neighborhood as most homes have screened porches measuring 12 feet by 14 feet.
9. The Board found that Ms. Luxenberger testified that her neighbor's porch measures 14 feet deep by 12 feet wide and fits within the building envelope.
10. The Board found that Ms. Luxenberger testified that there is common area located adjacent to the rear of the Property.
11. The Board found that Ms. Luxenberger testified that the variance requested is the minimum variance to allow a reasonable sized addition.
12. The Board found that Mr. Timmons testified that the steps will be on the side of the addition so a variance will not be required for the steps.
13. The Board found that Mr. Timmons testified that the depth of the porch is shallow but will allow enough room for a table with seating. He argued that a smaller porch would not provide usable space.

14. The Board found that Cynthia Recca was sworn in to give testimony in favor of the Application.
15. The Board found that Ms. Luxenberger testified that she looked at building within the building envelope but a porch of that size would not keep with the integrity of the neighborhood.
16. The Board found that one person appeared in support of and no one appeared in opposition to the Application.
17. 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 a small lot with a swale occupying a portion of the rear yard. The dwelling was placed on the lot by the homebuilder and the Applicants only recently acquired the Property. Due to the small size of the lot, however, the Applicants learned that a reasonably sized porch would not fit on the lot. The lot's unique conditions limit the buildable area available to the Applicants and have created an unnecessary hardship and an exceptional practical difficulty for the Applicants who seek to construct a three-season room on the lot. The three-season room affords the Applicants with functional 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 the buildable area thereof is limited due to the size of the lot. The Applicants seek to construct a three-season room but are 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 reasonably sized three-season room to be constructed on the Property. The Board is convinced that the shape and location of the three-season room is also reasonable, which is confirmed when reviewing the survey provided by the Applicants.
 - d. The unnecessary hardship and exceptional practical difficulty were not created by the Applicants. The Applicants did not create the unusual size of the Property or place the home on the lot. The unique size of the Property is 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 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 three-season room will have no effect on the character of the neighborhood. The three-season room 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 three-season room in the rear yard setback area would somehow affect the neighborhood and no evidence was presented that the variance would somehow alter the essential character of the neighborhood. The Board also notes that neighbors indicated support of the Application.
 - f. 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 Applicants have demonstrated that the variance

sought will allow the Applicants to construct a three-season room on the Property. The porch is the minimum size necessary to allow for reasonable use of the space. The Board notes that the porch is shallower than neighboring porches of a similar character and that the Applicants have designed the steps to fit within the building envelope.

- 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 of the Motion to approve were Dr. Kevin Carson, Ms. Ellen Magee, Mr. John Williamson, and Mr. Brent Workman. No Board Member voted against the Motion to approve the variance application. Mr. Jeffrey Chorman did not participate in the discussion or vote on this 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 November 19, 2019