

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

**IN RE: RICHARD MACDONALD**

**(Case No. 12362)**

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 variances from the side yard setback and separation distance requirements for a proposed porch.

Findings of Fact

The Board found that the Applicant is requesting a variance of 3.7 feet from the five (5) feet side yard setback requirement on the northeast side for a proposed porch and a variance of 3.8 feet from the twenty (20) feet separation distance requirement between structures from Lot 53 for a proposed porch. This application pertains to certain real property located on the southeast side of Sea Air Avenue approximately 65 feet southwest of Skyview Street in the Sea Air Manufactured Home Park (911 Address: 19877 Sea Air Avenue, Rehoboth Beach) said property being identified as Sussex County Tax Map Parcel Number 3-34-13.00-310.00-55766. After a hearing the Board made the following findings of fact:

1. The Board was given copies of the Application, a survey of the Property dated July 25, 2019, 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 Richard MacDonald and Courtland Ottinger were sworn in to testify about the Application.
4. The Board found that Mr. MacDonald testified that he wishes to build a screened porch which was originally proposed to measure 12 feet by 18 feet but his contractor advised him that the porch was too large and recommended that he resurvey the lot.
5. The Board found that Mr. MacDonald testified that the exceptional practical difficulty was not caused by the Applicant as the home was placed at an angle on the lot by the Sea Air management 2 years ago.
6. The Board found that Mr. Ottinger, who is the Applicant's contractor, testified that the Property is unique as it is a narrow lot and the home was placed at an angle.
7. The Board found that Mr. Ottinger testified that the Property cannot otherwise be developed for a porch due to the placement of the door.
8. The Board found that Mr. Ottinger testified that the porch cannot be built within the setbacks as that would make the porch long and narrow and not allow space for a table and chairs.
9. The Board found that Mr. Ottinger testified that they looked a narrower porch but were too limited on space.
10. The Board found that Mr. Ottinger testified that this house is the only house on the road with this angle.
11. The Board found that Mr. Ottinger testified that variances will not alter the essential character of the neighborhood as there are many other homes with screened porches in the development.
12. The Board found that Mr. Ottinger testified that the variances requested are the minimum variance to allow a reasonable sized porch to be constructed.

13. The Board found that Mr. Ottinger testified that the porch cannot be moved toward the rear of the Property as it is being placed next to the entrance door to the house.
14. The Board found that Mr. Ottinger testified that the house is unique due to the placement and location of the door.
15. The Board found that Mr. Ottinger testified that the house meets the 20 feet separation distance requirement from the house on the neighboring lot.
16. The Board found that no parties appeared in support of or in opposition to the application.
17. The Board tabled the matter until October 7, 2019, at which time the Board discussed and voted on the Application.
18. 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 Property has some unique condition which has created an exceptional practical difficulty. Rather, the issue appears to be entirely self-created by the Applicant. The lot consists of 3,654 feet and there appears large enough area to construct a porch within the building envelope. The need for the variance is not due to the Property's condition but due to the Applicant's proposal to construct the porch in the building envelope.
  - b. The Applicant failed to prove that a reasonably sized porch could not be built in strict conformity with the Sussex County Zoning Code. The Applicant argues that the Property has unique physical conditions and that, due to these conditions, the Property cannot be developed in strict conformity with the Code. The Board, however, was not convinced by this argument. The Applicant failed to demonstrate that a smaller porch, which would otherwise meet the setback requirements, or that a different location for the porch would not suffice for reasonable use of the Property. The Applicant failed to convince the Board that a porch could not be constructed in compliance with the Code. Perhaps a porch built to compliance with the Code is not what the Applicant wants but the Property appears to have a large enough building envelope for the Applicant to construct a reasonably sized porch in compliance with the Sussex County Zoning Code. For these reasons, the Board finds that the Property could be developed in strict conformity with the Code and that the variances are not necessary to enable reasonable use of the Property.
  - c. The Board finds that the Applicant is creating his own exceptional practical difficulty by proposing to construct a porch which does not fit within the building envelope. The Applicant's decision to construct the porch in this location is the reason for the need for a variance and has nothing to do with the size, shape, or condition of the Property. The Board was not convinced that the variance request was the product of a *need*. Instead, the variance request appears to be the product of a *want* as the Applicant seeks to construct the porch for purposes of convenience, profit, and / or caprice. Since the Applicant can build a porch that can comply the Sussex County Zoning Code, the need for the variance is something created by the Applicant's wants rather than an unusual physical condition relating to the Property. The Applicant has thus created his own exceptional practical difficulty.
  - d. Since the variances are not necessary to enable the reasonable use of the Property, the Board also finds that the variances requested are not the minimum variances necessary to afford relief. Furthermore, the Board finds

there is space to build a reasonably sized porch on the Property in compliance with the Sussex County Zoning Code.

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 Dr. Kevin Carson, Mr. John Williamson, and Mr. Brent Workman. Ms. Ellen Magee voted against the Motion to deny 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 December 3, 2019