

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: DEBORAH CLEMENTS

(Case No. 12364)

A hearing was held after due notice on October 7, 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 a variance from the front yard setback requirement for proposed structures.

Findings of Fact

The Board found that the Applicant is requesting a variance of 6.7 feet from the thirty (30) feet front yard setback requirement for a proposed screen porch. This application pertains to certain real property located on the southwest corner of New Road and New Lane (911 Address: 2 New Lane, Lewes); said property being identified as Sussex County Tax Map Parcel Number 3-35-8.00-597.00. 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 August 12, 2019, drawings of the proposed porch, 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 William Fay, Deborah Clements, and Steven Marchant were sworn in to give testimony about the Application. Mr. Fay submitted exhibits to the Board.
4. The Board found that Mr. Fay testified that there is an existing deck in front of the home that complies with the Code but the Applicant would like to put a roof over the deck for safety reasons.
5. The Board found that Mr. Fay testified that the roof would provide shelter for a resident who has a disability and is unstable on her feet.
6. The Board found that Mr. Fay testified that the existing deck rotted and needed to be replaced.
7. The Board found that Mr. Fay testified that that Property is unique because it is a corner lot.
8. The Board found that Mr. Fay testified that the exceptional practical difficulty was not created by the Applicant as she is trying to enclose an existing deck for safety and shelter.
9. The Board found that Mr. Fay testified that the variance will not alter the essential character of the neighborhood as the deck has been in place since about 1999.
10. The Board found that Mr. Fay testified that there will not be any extension of the existing deck.
11. The Board found that Mr. Fay testified that the edge of paving to the street is about 2.5 feet from the property line.
12. The Board found that Mr. Fay testified that there is a covered porch to the rear of the home but the main entrance to the home is via the front. The proposed porch will be close to the driveway and where the Applicant parks her car.
13. The Board found that Ms. Clements testified that weather related issues have caused the front door to be replaced multiple times.

14. The Board found that Ms. Clements testified that the Property is serviced by well and septic in the rear yard and that the house is closer to New Lane due to the septic system.
15. The Board found that Mr. Fay testified that the steps will be 1 foot from the house and will measure 3 feet wide. No variance is needed for the steps.
16. The Board found that no one appeared in support of or 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 due to its size and shape. The Property is only 120 feet deep and is wider than it is deep. These conditions result in a limited building envelope which is further limited by the location of the septic system in the rear yard which caused the dwelling to be placed closer to the front yard. The Applicant has experienced weather related issues with the front of her property and needs coverage over her existing deck to provide protection from the elements. This protection is further needed due to the disability of the resident. These unique conditions of the Property have, thus, created an unnecessary hardship and exceptional practical difficulty for the Applicant.
 - 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 situation, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Applicant needs to cover her existing deck to provide safer access to the home but is unable to do so due to the unique conditions of the lot. It is clear from the survey that the deck cannot be covered in strict conformity with the Sussex County Zoning Code. The Board is thus convinced that the variance is necessary to enable the reasonable use of the Property as the variance will allow the Applicant to provide cover over the existing deck. The Board is convinced that the size, shape, and location of the covered deck / porch are reasonable. Notably, the raising of the covered deck / porch will not project closer to New Lane than the existing deck.
 - d. The unnecessary hardship and exceptional practical difficulty were not created by the Applicant. As discussed above, the Property has unique conditions which have limited its building envelope and resulted in the house being placed closer to New Lane. The Applicant needs to cover the deck with a porch in order to provide safer access to the home but is unable to do so without a variance. The Board was convinced that the Applicant has not created the exceptional practical difficulty and unnecessary hardship. Furthermore, the Board is convinced that the Applicant did not come to the Property with an illegal use in mind. Rather, the Applicant is limited by the physical conditions of the Property and needs the variances in order to continue the reasonable use thereof.
 - 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 porch will have no effect on the character of the neighborhood. The deck has been on the Property for many years and the Applicant proposes to use the same footprint as the existing deck. No complaints were noted in the record about its location. The Board heard no

evidence that the variance would somehow alter the essential character of the neighborhood or be detrimental to the public welfare.

- 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 Applicant have demonstrated that the variance sought will allow the Applicant to reasonably cover the deck with a porch to provide safe access to the home. The Applicant has also minimized the need for the variances by placing the steps to the porch within the building envelope.
- g. The Board finds that the granting of this request is a reasonable accommodation to a person with a disability.
- h. 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, Mr. John Williamson, and Mr. Brent Workman. No Board Member 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 December 3, 2019