

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

**IN RE: KENNETH BURKE & LORRAINE BURKE**

**(Case No. 12379)**

A hearing was held after due notice on November 4, 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 rear yard setback requirement for a proposed structure.

Findings of Fact

The Board found that the Applicants are requesting a variance of 3 feet from the ten (10) feet rear yard setback requirement for a screened porch. The application pertains to certain real property located on the west side of Herring Reach Court approximately 568 feet north of Inlet Breeze Drive in the Bay Pointe subdivision (911 Address: 23670 Herring Reach Court, Lewes); said property being identified as Sussex County Tax Map Parcel Number 2-34-18.00-662.00. After a public hearing, the Board made the following findings of fact.

1. The Board was given copies of the Application, a building permit application, drawings, information on sun sensitivity, photographs, letters of support, a survey of the Property dated June 7, 2010, 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 Kenneth Burke and Lorraine Burke were sworn in to testify about the Application.
4. The Board found that Mr. Burke testified that the Applicants seek a variance to place a screened in porch over a deck that is already in place. The deck will not be extended.
5. The Board found that Mr. Burke testified that the Property is unique as it is a small lot and the lot cannot be otherwise developed for a screen porch without the variance.
6. The Board found that Mr. Burke testified that the deck measures 10 feet by 14 feet.
7. The Board found that Mr. Burke testified that there is common ground to the rear of the Property.
8. The Board found that Mr. Burke testified that there is no room on either side of the dwelling to put a screened porch.
9. The Board found that Mr. Burke testified that Ryan Homes built the dwelling and did not offer either deck or screened porch at time of building.
10. The Board found that Mr. Burke testified that the variance will not alter the essential character of the neighborhood as there are many other screened porches and also some rear yard variances in the area.
11. The Board found that Mr. Burke testified that the variance requested is a minimum to allow for the current deck to be screened in.
12. The Board found that Mr. Burke testified that the porch is needed for health reasons.
13. The Board found that Mrs. Burke testified that she has medical issues which require that she limit her exposure to sunlight and that is the reason they are requesting a screened porch. She noted that the rear yard receives a great deal of sunlight.
14. The Board found that Gerald Geibel and Daniel DiLoretto, who are neighbors of the Applicants, were sworn in to give testimony in support of the Application. Both parties testified that the variance will not impact the neighborhood.

15. The Board found that two parties appeared in support of and no parties appeared in opposition to the Application.
16. 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 consisting of only 7,875 square feet. The dwelling was placed on the lot by the homebuilder and the house did not include a screen porch. 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 screen porch on the lot. The screen porch affords the Applicants with functional space. The porch is also needed because Mrs. Burke has medical issues which require she limit her exposure to the sun. The porch will afford her with functional outdoor space while protecting her from sunlight.
  - 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 screen porch 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 screen porch to be constructed on the Property. The Board is convinced that the shape and location of the screen porch 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 screen porch will have no effect on the character of the neighborhood. The screen porch 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 screen porch 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 screen porch on the Property. The porch is the minimum size necessary to allow for reasonable use of the

- space. The Board notes that the porch will be placed over an existing deck and will not exceed that footprint.
- 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.
  - h. The Board also finds that the granting of the variance is a reasonable accommodation to a person with a medical condition.

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, 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 January 7, 2020