

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: JOHN M. COSGROVE

(Case No. 12392)

A hearing was held after due notice on December 16, 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 requirements for a proposed structure.

Findings of Fact

The Board found that the Applicant is requesting a variance of 3 feet from the five (5) feet rear yard setback requirement for a proposed screened porch. The application pertains to certain real property located on the east side of Dodd Avenue approximately 127 feet south of Ocean View Avenue in the Sea Air Manufactured Home Park (911 Address: 19974 Dodd Avenue Rehoboth Beach); said property being identified as Sussex County Tax Map Parcel Number 3-34-13.00-310.00-54148. After a public hearing, the Board made the following findings of fact.

1. The Board was given copies of the Application, letters of support, a survey of the Property dated September 6, 2019, an exterior improvement request form application with attachments, drawings of the proposed porch, 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 John Cosgrove was sworn in to testify about the Application.
4. The Board found that Mr. Cosgrove testified that he wishes to build a screened porch addition to his house. The addition will measure approximately 30 feet by 9 feet and the house is approximately 60 feet wide.
5. The Board found that Mr. Cosgrove testified that the Property is unique due to the angle of the rear property line.
6. The Board found that Mr. Cosgrove testified that most of the porch will comply with the Code but the variance is requested where the rear yard narrows.
7. The Board found that Mr. Cosgrove testified that the Property cannot be developed with a screened porch without this variance.
8. The Board found that Mr. Cosgrove testified that the shape and uniqueness of the lot were not created by the Applicant.
9. The Board found that Mr. Cosgrove testified that the Property is located in Sea Air Village.
10. The Board found that Mr. Cosgrove testified that the variance would not alter the character of the neighborhood.
11. The Board found that Mr. Cosgrove testified that the neighbors on Dodd Avenue have no complaints and have signed a petition in support of the Application.
12. The Board found that Mr. Cosgrove testified that part of the Property backs up to a parking lot and a single family home which is over 100 feet from site. There is also a fence in the rear yard.
13. The Board found that Mr. Cosgrove testified that there are similar porch additions in the neighborhood.
14. The Board found that Mr. Cosgrove testified that the requested variance is the minimum variance to allow for a narrow screened porch to be added to the home.

15. The Board found that Mr. Cosgrove testified that there is a bug problem in the area and the screened porch is needed to have usable outdoor space.
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 as it is a small lot consisting of only 5,070 square feet. The Property is also shallow as the lot measures only 50.73 feet at its deepest point. The Property has angled rear property line which reduces the depth of the Property to only 42.59 feet at its shallowest point. The dwelling on the lot did not include a screen porch and the porch is needed due to problems with bugs in the neighborhood. Due to the small size of the lot, however, the Applicant learned that a reasonably sized porch would not fit on the lot. The lot's unique conditions limit the buildable area available to the Applicant and have created an unnecessary hardship and an exceptional practical difficulty for the Applicant who seeks to construct a screen porch on the lot. The screen porch affords the Applicant 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 Applicant seeks to construct a screen porch but is 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 Applicant. The Board notes that the Applicant proposes to place the porch to the deeper side of the Property, yet still encountered difficulty complying with the building envelope restrictions.
 - d. The unnecessary hardship and exceptional practical difficulty were not created by the Applicants. The Applicant did not create the unusual size and shape of the Property. The unique size and shape of the Property is clear when reviewing the survey. There was also no evidence that the Applicant created the bug problem which necessitated the porch to afford for functional outdoor space. The Board is convinced that the unnecessary hardship and exceptional practical difficulty were not created by the Applicant 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 a parking lot. The rear of the property is shielded by a privacy fence and the nearest home to the rear is located over 100 feet away. 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 or be detrimental to the public welfare. The Board also notes that neighbors indicated support of the Application.

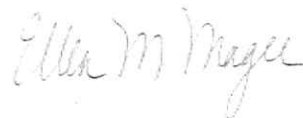
- f. The variance sought is the minimum variance necessary to afford relief and the variance requested represents the least modification possible of the regulation at issue. The Applicant has demonstrated that the variance sought will allow the Applicant to construct a screen porch on the Property. The porch is the minimum size necessary to allow for reasonable use of the space. The Board notes that the Applicant proposes to construct the porch on the deepest side of the lot and only a portion of the porch will encroach 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 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 February 18, 2020.