

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: MICHAEL BARIL & THERESA BARIL

(Case No. 12505)

A hearing was held after due notice on December 21, 2020. The Board members present were: Dr. Kevin Carson, Mr. Jeff Chorman, Ms. Ellen Magee, and Mr. John Williamson.

Nature of the Proceedings

This is an application for variances from the corner front setback for proposed structures.

Findings of Fact

The Board found that the Applicants are seeking a variance of 5 feet from the fifteen (15) feet corner front setback requirement for proposed steps, a variance of 7 feet from the fifteen (15) feet corner front setback requirement for a proposed screen porch, and a variance of 5 feet from the fifteen (15) feet corner front setback requirement from a proposed deck. This application pertains to certain real property located on the northeast corner of the Woodland Circle and Holly Court intersection within the Angola by the Bay Subdivision (911 Address: 23026 Holly Court, Lewes); said property being identified as Sussex County Tax Map Parcel Number 2-34-11.20-365.00. After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, an aerial photograph of the Property, a survey of the Property dated September 20, 2018, photographs, 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 Michael Baril and Theresa Baril were sworn in to give testimony about the Application.
4. The Board found that Mr. Baril testified that the property is unique as it is irregularly shaped and narrow.
5. The Board found that Mr. Baril testified that the Applicants intend to construct a screen porch and a 6 foot by 34 foot deck from the front door to the proposed screen porch.
6. The Board found that Mr. Baril testified that, due to the sharp angles of the building setback line, the porch cannot be built within the setbacks.
7. The Board found that Mr. Baril testified that the exceptional practical difficulty was not created by the Applicants but by the uniqueness of the Property.
8. The Board found that Mr. Baril testified that the Property has an extreme angle, which, according to Ms. Baril, the Applicants did not previously realize.
9. The Board found that Mr. Baril testified that the variances will not alter the essential character of the neighborhood as the screen porch will not extend beyond the sidewalk already existing on the Property.
10. The Board found that Mr. Baril testified that the variances requested are the minimum variances and only one corner of the porch will encroach due to the sharp angles.
11. The Board found that Mr. Baril testified that there is grass between the road and the property line and there is approximately 30 feet from the road to the sidewalk on the lot.

12. The Board found that Mr. Baril testified that the deck and screen porch will be located within the sidewalk area.
13. The Board found that Mr. Baril testified that the steps will project towards the driveway approximately 3 feet and the steps will be within the building setback line.
14. The Board found that Mr. Baril testified that the homeowners association has approved the request.
15. The Board found that Ms. Baril testified that half of the porch will meet the setback requirements.
16. The Board found that Ms. Baril testified that the proposed structure will not create any visibility issues in the neighborhood.
17. The Board found that no one appeared in support of or opposition to 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 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 lot is small as it consists of only 7,170 square feet and its shape is unique due to the sharp angle of the lot along Woodland Circle. Due to these conditions, the building envelope is small and oddly shaped. These conditions have created an unnecessary hardship and exceptional practical difficulty for the Applicants who seek to build a porch, steps, and deck on the Property as noted above.
 - 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 Property and the situation, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Applicants seek to construct a proposed porch, deck, and steps on the lot but are unable to do so while complying with the Sussex County Zoning Code. The Board is thus convinced that the variances are necessary to enable the reasonable use of the Property as the variances will allow the Applicants to construct these structures on the lot. The Board is convinced that the size, shape, and location of the structures are reasonable. The Board also notes that the only a portion of these structures will encroach into the setback area.
 - d. The unnecessary hardship and exceptional practical difficulty were not created by the Applicants. As discussed above, the Property has unique conditions which have limited the Applicants' ability to reasonably develop the Property. The Applicants did not create the unique conditions of the lot as they only recently acquired the lot. The Board was convinced that the Applicants have not created the exceptional practical difficulty and unnecessary hardship. Furthermore, the Board is convinced that the Applicants did not come to the Property with an illegal use in mind. Rather, the Applicants are limited by the physical conditions of the Property and they need the variance to reasonably develop the Property as proposed.
 - e. The variances 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 variances will have no effect on the character of the neighborhood. The variances will allow the Applicants to construct a reasonably sized porch, steps, and deck as proposed. No neighbors appeared in opposition to the request and only a portion of the structures will encroach into the setback area. The Board also notes that there is a large gap between the edge of paving of the road and the property line so the Property appears larger than it actually is. Lastly, the Board finds that

no evidence was presented which demonstrate that the variances would somehow alter the essential character of the neighborhood or be detrimental to the public welfare.


- f. The variances sought are the minimum variances necessary to afford relief and the variances requested represent the least modifications possible of the regulations at issue. The Applicants have demonstrated that the variances sought will allow the Applicants to construct a porch, steps, and deck on the Property. The Board finds that the Applicants took reasonable measures to otherwise limit encroachments into the setback area but were constrained by the Property's unique conditions.
- 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 were Dr. Kevin Carson, Mr. Jeffrey Chorman, Ms. Ellen Magee, and Mr. John Williamson. No Board Member voted against the motion to approve Application. Mr. Brent Workman did not participate in the discussion or vote on this application.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY



John Williamson
Chairman

If the use is not established within two (2) years from the date below the application becomes void.

Date March 1, 2021.