

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: GARY M. DESCH & JUDD M. ELKINS

(Case No. 12536)

A hearing was held after due notice on April 12, 2021. The Board members present were: Dr. Kevin Carson, Mr. Jeff Chorman, Mr. John T. Hastings, Mr. John Williamson, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for a variance from the side yard setback requirement for an existing structure.

Findings of Fact

The Board found that the Applicants are requesting a variance of 5.9 feet variance from the ten (10) feet side yard setback requirement on the southeast side for an existing covered deck. This property is located on the southwest side of Gracie Lane within the Beachwoods I Subdivision (911 Address: 33132 Gracie Lane, Lewes) said property being identified as Sussex County Tax Map Parcel Number 3-34-11.00-104.11. After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a deed to the Property, a survey of the Property dated January 27, 2021, an administrative corrective process notice, a letter of support of the Application, photographs, 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 Gary Desch was sworn in to testify about the Application. Shannon Carmean Burton, Esquire, presented the Application on behalf of the Applicants.
4. The Board notes that an administrative corrective variance was approved for the existing dwelling, deck, and steps as a certificate of occupancy was issued in error in 1981. This application pertains to a different deck which is located on the southeast side of the Property.
5. The Board found that Mrs. Burton stated that the Applicants entered into a contract in December 2020 to sell the Property and that, prior to closing on the Property, the purchasers engaged Cotten Engineering to prepare a boundary survey of the Property and the survey revealed that the unenclosed covered deck, the shed, and another deck encroached into the side yard setback.
6. The Board found that Mrs. Burton stated that, prior to receipt of the survey, the Applicants were unaware of any encroachments or violations and promptly filed for a variance for the unenclosed covered deck to bring the Property into compliance with Sussex County Zoning Code.
7. The Board found that Mrs. Burton stated that there is no variance being sought for the deck on the northwest side or the shed as the shed will be relocated to comply with the 5 feet setback requirement allowed by code and an administrative variance was issued for the other deck.
8. The Board found that Mrs. Burton stated that the Property is unique as it is an irregular shaped lot located on a private road named Gracie Lane and the lot is a heavily wooded.
9. The Board found that Mrs. Burton stated that the exceptional practical difficulty is due to the uniqueness of the Property and is not due to provisions of the Sussex County Zoning Code.

10. The Board found that Mrs. Burton stated that there is no possibility that the Property can be developed in strict conformity with the Zoning Code as it is an existing structure and it would be necessary to remove a portion of the deck and roof.
11. The Board found that Mrs. Burton stated that it has been in its current location since 2014 with no complaints from neighbors.
12. The Board found that Mrs. Burton stated that the variance is necessary to enable the reasonable use of the Property.
13. The Board found that Mrs. Burton stated that the exceptional practical difficulty was not created by the Applicants as a contractor was engaged to extend the deck and construct a cover to provide shade.
14. The Board found that Mrs. Burton stated that the Applicants were unaware that the improvements encroached into the side yard setback until the recent survey of the Property.
15. The Board found that Mrs. Burton stated that granting the variance will not alter the essential character of the neighborhood, nor will it substantially or permanently impair the use of adjacent properties or be detrimental to the public welfare.
16. The Board found that Mrs. Burton stated that the neighboring property owner does not oppose this application.
17. The Board found that Mrs. Burton stated that the variance represents the minimum variance that will afford relief and represents the least modification possible of the regulation in issue.
18. The Board found that Mrs. Burton stated that the Applicants simply seek to bring the existing improvements into compliance with the Zoning Code.
19. The Board found that Mr. Desch affirmed the statements made by Mrs. Burton as true and correct.
20. The Board found that Mr. Desch testified that the Property is heavily wooded and there are many trees which act as buffers between his property and the adjacent property.
21. The Board found that Mr. Desch testified that a contractor was engaged to complete the work in 2014 and that the construction was completed without permits unbeknownst to the Applicants.
22. The Board found that Mr. Desch testified that there is approximately 4 – 5 car lengths between the deck and the house on the adjacent property.
23. The Board found that Mr. Desch testified that this request is strictly to bring the existing non-conformity into compliance with the County Zoning Code.
24. The Board found that Mr. Desch testified that there is a mound septic system in the front of the Property.
25. The Board found that Mr. Desch testified that, because the lot has such a unique shape, it was difficult to determine where the lot lines are located.
26. The Board found that no one appeared in support of or in opposition to the Application.
27. 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 for the variance met the standards for granting a variance. The findings below further support the Board's decision to approve the Application for the variance.
 - a. The Property is unique due to its size, shape, and development. The Property has wide front yard but the rear yard is much narrower in comparison. The northwest side of the lot is used for the septic system and is otherwise unusable for structures. The Property is also heavily wooded, which further complicates the development of the lot. The house was built in 1981 by a prior owner and the Applicants only acquired the lot in 2014. Ultimately, these unique characteristics of this Property have created a limited building envelope and have created an unnecessary hardship and

exceptional practical difficulty for the Applicants who seek to retain a covered deck on the site.

- 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 unique physical characteristics and the buildable area thereof is limited due to those characteristics. The Applicants seek to retain a covered deck on the lot 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 the reasonably sized deck to remain on the lot. The Board is convinced that the shape and location of the structure are 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. As previously stated, the Property has unique conditions and these conditions have resulted in a limited building envelope on the Property. These conditions have created the unnecessary hardship and exceptional practical difficulty. Furthermore, the Applicants are constrained by the location of the existing building and the septic system. The Applicants also relied on their contractor to construct the deck in compliance with the Code only to later discover the error.
- 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 deck will have no effect on the character of the neighborhood. The neighbor most impacted by the variance supports the request and there is a significant distance between the deck and structures on the neighboring property. There was no substantial evidence that the variance would somehow alter the essential character of the neighborhood.
- 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 retain a reasonably sized deck on the Property. No additions or modifications to the deck are proposed.
- 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 the variance were Dr. Kevin Carson, Mr. Jeffrey Chorman, Mr. Travis Hastings, 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



John Williamson
Chair

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

Date June 7, 2021