

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: CHRISTOPHER REINHOLZ

(Case No. 12685)

A hearing was held after due notice on May 2, 2022. The Board members present were: Dr. Kevin Carson, Mr. Jeff Chorman, Mr. John T. Hastings, Mr. Jordan Warfel, and Mr. John Williamson.

Nature of the Proceedings

This is an application for variances from the side yard setback requirement for proposed structures.

Findings of Fact

The Board found that the Applicant is requesting the following variances:

1. A variance of 2.5 feet from the fifteen (15) feet side yard setback requirement on the north side for a proposed porch; and
2. A variance of 8 feet from the fifteen (15) feet side yard setback requirement on the north side for a proposed deck.

This property is located on the southwest side of White Oak Road within the Rehoboth Beach Yacht and Country Club Subdivision (911 Address: 30 White Oak Road, Rehoboth Beach) said property being identified as Sussex County Tax Map Parcel Number 334-19.00-73.00 ("the Property"). After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a survey of the Property dated January 31, 2020, a schematic of the proposal, Findings of Fact for Case No. 12432, a letter supporting the Application, 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 one letter in support of the Application and no correspondence in opposition to the Application.
3. The Board found that Trent Collins was sworn in to testify about the Application.
4. The Board found that Mr. Collins testified that the variances are needed due to the unique shape of the Property and placement of the home by the original homeowner.
5. The Board found that Mr. Collins testified that the Property is a corner lot with a 15 feet side yard and rear yard setback and a 25 feet front yard setback and that the 25 feet front yard setback impacts both the side and rear also. He noted that the structure was built close to the side setback to accommodate the width of the home thereby leaving 13.5 feet of buildable area to the rear of the home.
6. The Board found that Mr. Collins testified that the location of the home on the lot and the existing chimney and crawl space access further limit the building area within the setbacks.
7. The Board found that Mr. Collins testified that the improvements will enhance the space with an aesthetically pleasing porch in lieu of an unused concrete slab.
8. The Board found that Mr. Collins testified that the homeowner currently uses the driveway as outdoor space and that the patio is unusable.
9. The Board found that Mr. Collins testified that the deck will be extended 2 feet beyond the garage but will comply with the front yard setback.
10. The Board found that Mr. Collins testified that the outdoor shower is adjacent to the garage and the deck provides access to the shower.

11. The Board found that Mr. Collins testified that the steps can comply with the setback requirements and no variance is needed for the steps.
12. The Board found that Mr. Collins testified that the need is due to the footers having to go outside of the existing concrete pad, which is not being removed due to cost to the homeowner. He noted that the footers will be right along the edge of the existing concrete pad and that the porch and deck will cantilever over the end girder.
13. The Board found that Mr. Collins testified that there will be an underdeck gutter system that will channel into the existing gutter system on the house and that there is a small swale between the two (2) properties.
14. The Board found that Mr. Collins testified that the screened porch will be 15 feet deep.
15. The Board found that Mr. Collins testified that, if the concrete pad were not existing, the structure would only be a few inches more into compliance due to the existing chimney and access to the crawl space. He noted that proposed porch and deck will be 3 feet farther out than the existing concrete pad.
16. The Board found that Mr. Collins testified that the concrete pad is in a bad location for patio space and the homeowner does not enjoy it due to the way the sun affects the area and their views are impeded. He also noted that there are bug issues in the back yard due to the Property's proximity to a bay.
17. The Board found that Mr. Collins testified that approval is needed from the homeowners association but receiving said approval should not be an issue.
18. The Board found that no one appeared in support of or in opposition to the Application.
19. 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 the size and shape of the lot. The front property line is curved and the lot is not exceptionally large. These conditions have created an unusually shaped and limited building envelope. The Property was developed by prior owner with a house in the 1980s. The Property is also near the bay and suffers from bug problems which limit the functionality of the rear yard. The unique conditions of the lot and the prior construction of the house have created an unnecessary hardship and exceptional practical difficulty for the Applicant who seeks to construct a reasonable deck and porch on the lot so that the Applicant can have functional outdoor 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 Property and the situation, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Applicant seeks to construct a porch and deck on the lot but is 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 Applicant to construct these reasonable additions on the lot. The Board is convinced that the size, shape, and location of the structures are reasonable. The Board notes that the existing patio is unusable, in part, due to bugs associated with the bay.
 - 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 the Applicant's ability to reasonably develop the Property. The Applicant did not create the unique conditions of the lot

or construct the original house. 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 the prior development thereof and the Applicant needs the variances in order to construct these reasonable structures.

- 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 Applicant to construct a reasonable porch and deck on the lot which should be an improvement over the existing patio. The neighbor most affected by the variance has submitted a letter supporting the Application. Moreover, 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 regulation at issue. The Applicant has demonstrated that the variances sought will allow the Applicant to construct a reasonable porch and deck on the Property that will afford the Applicant with functional outdoor space. The Board notes that the Applicant was limited in where the structures could be placed due to the location of the existing house, chimney, and concrete pad and the Board finds that the Applicant has attempted to minimize the encroachments 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.
- h. This approval is subject to the following condition:
 - i. The Applicant must provide to the Office of Planning & Zoning a copy of a written approval or letter of no objection to the proposed deck and porch from the homeowners association which governs the Property.

The Board granted the variance application with conditions 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 with conditions. The Board Members in favor of the Motion to approve the variance application with conditions were Dr. Kevin Carson, Mr. Jeffrey Chorman, Mr. Travis Hastings, Mr. Jordan Warfel, and Mr. John Williamson. No Board Member voted against the Motion to approve the variance application with conditions.

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 July 11, 2022