

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

**IN RE: JOHN MCCOLGAN AND DONNA MCCOLGAN**

**(Case No. 11374)**

A hearing was held after due notice on April 7, 2014. The Board members present were: Mr. Dale Callaway, Mr. Jeff Hudson, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for a variance from the rear yard setback requirement.

Findings of Fact

The Board found that the Applicants were seeking a variance of 1.4 feet from the five (5) feet rear yard setback requirement for an existing deck. The Applicants have requested that the aforementioned requested variance be granted as it pertains to certain real property located south of Road 336 (Piney Neck Road) and being east of Bayberry Court and 300 feet north of Gysea Court Cul-de-sac and being Lot 116 in The Marina at Pepper's Creek Subdivision; said property being identified as Sussex County Tax Map Parcel Number 2-33-7.00-323.00. After a hearing, the Board made the following findings of fact:

1. The Board found that the Office of Planning & Zoning received no correspondence in support of or in opposition to the Application.
2. John McColgan and Kevin Brosna were sworn in to testify on behalf of the Application.
3. The Board found that Mr. Brosna testified that the Property is 106 feet deep and is adjacent to open space in the rear yard.
4. The Board found that Mr. Brosna testified that the Applicants selected a home with a deck to be built on the Property by Insight Homes.
5. The Board found that Mr. Brosna testified that the standard deck option available measures twelve (12) feet by fourteen (14) feet.
6. The Board found that Mr. Brosna testified that the deck lies 1.4 feet into the rear yard setback area.
7. The Board found that Mr. Brosna testified that, in order to modify the deck, the Applicants would have to remove the deck and change its structural elements.
8. The Board found that Mr. Brosna testified that the building permit said that the deck had to be no more than five (5) feet from the rear yard property line.
9. The Board found that Mr. Brosna testified that he believes the encroachment was due to an oversight during construction.
10. The Board found that Mr. Brosna testified that the dwelling was placed thirty-two (32) feet from the front yard property line.
11. The Board found that Mr. Brosna testified that the deck would have complied had the dwelling been placed thirty (30) feet from the front yard property line.
12. The Board found that Mr. Brosna testified that the difficulty was created by Insight Homes who constructed the deck on behalf of the Applicants.
13. The Board found that Mr. Brosna testified that the building footprint fits within the building envelope but the house was sited improperly so the deck encroaches on the rear.
14. The Board found that no parties appeared in support of or in opposition to the Application.
15. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, the Board determined that the Application failed to meet the standards for granting a variance. The Applicants have

created their own hardship by building the deck into the rear yard setback area. The permit obtained for the deck clearly set forth the rear yard setback area yet the deck was not built in compliance with the Sussex County Zoning Code. A reasonable size deck could be built in compliance with the Sussex County Zoning Code.

The Board denied the variance application finding that it failed to meet the standards for granting a variance.

Decision of the Board

Upon motion duly made and seconded, the Application was denied. The Board Members voting to deny the Application were Mr. Dale Callaway, Mr. Jeff Hudson, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman. No Member voted against the Motion to Deny the Application.

BOARD OF ADJUSTMENT  
OF SUSSEX COUNTY

  
Dale Callaway  
Chairman

Date May 6, 2014.