

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: GEORGE N. BELOLAN & CAMILLE J. BELOLAN

(Case No. 11590)

A hearing was held after due notice on June 22, 2015. 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 variances from the rear yard setback requirement.

Findings of Fact

The Board found that the Applicants were seeking variances of 9.1 feet from the twenty (20) feet rear yard setback requirement for a set of existing steps and a variance of 6.1 feet from the twenty (20) feet rear yard setback requirement for an existing deck. This application pertains to certain real property located on the east side of Angola Road West approximately 702 feet south of Angola Road (911 Address: 22865 Angola Road West, Lewes); said property being identified as Sussex County Tax Map Parcel Number 2-34-11.16-73.00.

1. The Board was given copies of the Application, a portion of the tax map of the area, and an undated survey of the Property.
2. The Board found that the Office of Planning & Zoning did not receive any correspondence regarding the Application.
3. Camille Belolan was sworn in to testify about the Application. William Schab, Esquire, presented the case on behalf of the Applicants and submitted pictures to the Board.
4. The Board found that Mr. Schab stated that the Property is located in Angola by the Bay.
5. The Board found that Mr. Schab stated that the previous owner purchased the Property in 1996 and built the dwelling. They sold the Property in 2009 and were unaware of any encroachments. The Applicants purchased the Property in 2014.
6. The Board found that Mr. Schab stated that a survey completed for settlement showed the encroachments.
7. The Board found that Mr. Schab stated that the lot is small as it is only 50 feet by 100 feet.
8. The Board found that Mr. Schab stated that the Property cannot be developed in strict conformity without removing the stairs to the deck and the deck.
9. The Board found that Mr. Schab stated that the Applicants did not build the deck, therefore the difficulty was not created by the Applicants.
10. The Board found that Mr. Schab stated that the variances will not alter the essential character of the neighborhood.
11. The Board found that Mr. Schab stated that the deck is adjacent to the common area and that the Homeowners Association has no objection to the Application.
12. The Board found that Mr. Schab stated that the variances are the minimum variances to afford relief.
13. The Board found that Mr. Schab stated that removal of the deck would create an undue financial and practical hardship to the Applicants which would adversely affect the aesthetics of the home.
14. The Board found that Ms. Belolan, under oath, confirmed the statements made by Mr. Schab.
15. The Board found that no parties appeared in support of or in opposition to the Application.

16. 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 small size. The unique characteristics of this Property limit the buildable area available to the Applicants and have created an exceptional practical difficulty for the Applicants. The uniqueness of the Property is evident when reviewing the survey submitted by the Applicants.
 - b. Due to the uniqueness of the lot, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Applicants seek to retain a deck and steps of a reasonable size but are unable to do so without violating the Sussex County Zoning Code. The Board is convinced that the variances are necessary to enable the reasonable use of the Property as the variances will allow a reasonably sized deck and steps to be retained on the Property. The Board is convinced that the size, shape, and location of the deck and steps are reasonable, which is confirmed when reviewing the survey.
 - c. The exceptional practical difficulty was not created by the Applicants. The Applicants did not create the unusual size of the Property. Rather, the lot was created by a prior owner. The unique characteristics of the Property, which are clear when reviewing the survey, have created an exceptional practical difficulty. The Applicants also did not construct the deck and steps as those features were placed on the lot by a prior owner. It is clear to the Board that the exceptional practical difficulty was not created by the Applicants.
 - d. 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 un rebutted testimony confirms that the homeowners association was made aware of the encroachment and does not object thereto. The encroachment is into the rear yard setback area which is adjacent to common area. The deck and steps have also been in their present location for quite some time with no complaint about the encroachment having been submitted into the record. Rather, it appears as though the deck and steps are likely part of the character of the neighborhood. Furthermore, no evidence was presented which would indicate that the variances would somehow alter the essential character of the neighborhood or be detrimental to the public welfare.
 - e. 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 deck and steps to remain in their existing location. No variance is being sought for an addition to the existing deck and steps.

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 Mr. Dale Callaway, Mr. Jeff Hudson, Mr. John Mills,

Mr. Norman Rickard, and Mr. Brent Workman. No Board Members voted against the Motion to approve the variance application.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY


Dale Callaway
Chairman

If the use is not established within one (1)
year from the date below the application
becomes void.

Date August 4, 2015