

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

**IN RE: LAWRENCE WITUCKI AND BARBARA WITUCKI**

**(Case No. 11692)**

A hearing was held after due notice on January 4, 2016. The Board members present were: Mr. Dale Callaway, Mr. John Mills, Mr. Jeff Hudson, Mr. Norman Rickard, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for variances from the front yard and side yard setback requirements.

Findings of Fact

The Board found that the Applicants are seeking a variance of 0.4 feet from the thirty (30) feet front yard setback requirement for an existing dwelling and a variance of 7.6 feet from the thirty (30) feet front yard setback requirement for a proposed deck. This application pertains to certain real property is located on the west side of Sycamore Drive approximately 335 feet south of Angola Road (911 Address: 22834 Sycamore Road, Lewes); said property being identified as Sussex County Tax Map Parcel Number 2-34-11.16-16.00.

1. The Board was given copies of the Application, a letter from Connie Smith and Kathleen Felty, a letter from William and Jaclyn Cusick, and a portion of an undated survey of the Property.
2. The Board found that the Office of Planning & Zoning received had not received any correspondence in support of or in opposition to Application.
3. Lawrence Witucki, Barbara Witucki and Rich McFarland were sworn in to testify about the Application. Mr. and Mrs. Witucki submitted exhibits to the Board including pictures of the Property and letters of support.
4. The Board found that Mrs. Witucki testified that the dwelling was built in 1980 and the Applicants purchased the Property in 1985. The dwelling and deck existed at that time.
5. The Board found that Mrs. Witucki testified that the deck is rotting and must be replaced. The existing deck's railings and joists are not up to code and there is no other location for the deck. The dwelling has large sliding glass doors across the front to access the deck.
6. The Board found that Mrs. Witucki testified that the Property cannot otherwise be developed.
7. The Board found that Mrs. Witucki testified that the difficulty was not created by the Applicants.
8. The Board found that Mrs. Witucki testified that the variances will not alter the essential character of the neighborhood.
9. The Board found that Mrs. Witucki testified that the current deck is L-shaped. The new deck will be smaller but will be one (1) foot wider which will afford better use of the deck. The Applicants are removing approximately 12 feet from the deck on the side.
10. The Board found that Mrs. Witucki testified that neighbors have no objection to the variance. The Property is located in Angola by the Bay and the Homeowners Association approved the variances.
11. The Board found that Mr. McFarland, who is the Applicants' contractor, testified that the deck needs to be entirely rebuilt.
12. The Board found that Mr. McFarland testified that the usable width of the current deck is only 5.6 feet due to the handrail. The deck's width will be increased by

6.2 feet wide to 7.2 feet wide but approximately 120 square feet of deck space will be eliminated elsewhere.

13. The Board found that one (1) party appeared in support of the Application.
14. The Board found that no parties appeared in opposition to the Application.
15. The Board found that no variance from the side yard setback was required even though the Application had been advertised to include a side yard variance.
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 size and shape. The Property is quite small and narrow as evidenced by the survey. The unique size of the Property has created a limited buildable area available to the Applicants and has created an exceptional practical difficulty for the Applicants who seek to replace an existing deck and to retain a dwelling on the lot.
  - b. Due to the uniqueness of the lot, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property has a unique size and the buildable area thereof is limited due to its size. The Applicants seek to retain a dwelling and to replace a deck of 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 dwelling to remain and for a reasonably sized deck to be rebuilt the Property. The dwelling has been in its current location for many years and it is likely that its encroachment into the front yard setback is even noticeable. The Board notes that the design of the house, as evidenced by the pictures submitted by the Applicants, is such that a deck off of the front of the house would be appropriate. It is unlikely that a deck of a reasonable size can be placed in on the Property in the front yard in compliance with the Code; especially since the dwelling itself encroaches into the front yard setback area. The new deck will be in largely the same location as the current deck which was placed on the lot over thirty (30) years ago. The Board is convinced that the size, shape, and location of this dwelling and deck are reasonable, which is confirmed when reviewing the survey provided by the Applicants.
  - c. The exceptional practical difficulty was not created by the Applicants. The Applicants did not create the unusual size of the Property nor did the Applicants design the house in such a fashion that a front deck would be necessary. The unique lot size has resulted in a limited building envelope on the Property and the small building envelope has created the exceptional practical difficulty. The unique characteristics of the Property are clear when reviewing the survey. Furthermore, the dwelling and original deck were placed on the Property by a prior owner and have been in their present locations for many years. The Board is convinced that the exceptional practical difficulty was not created by the Applicants but was created the lot's unique characteristics and by the placement of the original deck and dwelling by a prior owner.
  - 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 Board is convinced that the dwelling and deck will have no effect on the character of the neighborhood. The dwelling and deck have been on the Property for many years. Despite the longstanding location of the

deck and dwelling, no complaints were noted in the record about their location. The new deck will be similar in location to the prior deck and should enhance the appearance of the neighborhood as it will replace a rotting and dilapidated deck with a smaller and nicer structure. Review of the record indicates that neighbors and the homeowners association support this plan. 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 Applicants to construct a reasonably sized deck on the Property and to retain the dwelling on the lot. The Board notes that, while the deck is being widened, the size of the deck will actually be approximately 120 square feet smaller.

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 Member 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 March 1, 2016