

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

**IN RE: RICHARD MULVANERTON**

**(Case No. 11725)**

A hearing was held after due notice on February 29, 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 a variance from the rear yard setback requirement.

Findings of Fact

The Board found that the Applicant is seeking a variance of nine (9) feet from the ten (10) feet rear yard setback requirement for a proposed deck. This application pertains to certain real property located on south side of South Acorn Way approximately 95 feet south of Marie Boulevard (911 Address: 22370 South Acorn Way, Lewes); said property being identified as Sussex County Tax Map Parcel Number 2-34-6.00-737.00.

1. The Board was given copies of the Application, a portion of the tax map of the area, an undated survey of the Property, drawings of the Property, and pictures of the Property.
2. The Board found that the Office of Planning & Zoning received one (1) letter of support into the record and no correspondence in opposition to the Application.
3. The Board found that Richard Mulvanerton was sworn in to testify about the Application.
4. The Board found that Mr. Mulvanerton testified that the proposed deck will measure 14 feet by 32 feet. His previous home had a deck that measured 12 feet by 16 feet and he found it to be too small as it was difficult to maneuver around the smaller deck.
5. The Board found that Mr. Mulvanerton testified that the Applicant purchased the Property from Ryan Homes in September 2014.
6. The Board found that Mr. Mulvanerton testified that the common area and storm water pond are located adjacent to the rear of his property.
7. The Board found that Mr. Mulvanerton testified that the rear yard is shallow.
8. The Board found that Mr. Mulvanerton testified that he did not place the dwelling on the Property.
9. The Board found that Mr. Mulvanerton testified that the proposed deck will enhance the use of the Property.
10. The Board found that Mr. Mulvanerton testified that the Property is odd shaped.
11. The Board found that Mr. Mulvanerton testified that the variance requested is the minimum variance to afford relief.
12. The Board found that no parties appeared in support of or in opposition to the Application.
13. 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 has a unique and size which creates an odd building envelope. The unique characteristics of the lot have created an exceptional practical difficulty for the Applicant who seeks to construct a reasonably sized deck on the Property.

- 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 shape which has created a unique and limited building envelope. The Applicant seeks to construct a deck of a reasonable size but is unable to do so without violating the Sussex County Zoning Code. While the Applicant could build a smaller deck, a smaller deck would not enable the Applicant with reasonable use of the deck and would defeat the purpose of having a deck. The variance is thus, necessary to enable reasonable use of the Property as the variance will allow a reasonably sized deck to be constructed on the Property. The Board is convinced that the shape and location of this deck are reasonable, which is confirmed when reviewing the survey provided by the Applicant.
- c. The exceptional practical difficulty was not created by the Applicant. The Applicant did not create the unique size and shape of the lot which has resulted in a limited building envelope on the Property. The unique characteristics of the Property are clear from the record and when reviewing the survey. The Board is convinced that the exceptional practical difficulty was not created by the Applicant but was created by the lot's unique characteristics.
- d. The variance 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 deck will be located in the rear of the Property adjacent to common area and a storm water management pond. There will be no dwelling constructed on the adjacent rear lot. No evidence was presented which would indicate that the variance would somehow alter the essential character of the neighborhood or be detrimental to the public welfare.
- e. 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 Applicant has demonstrated that the variance sought will allow the Applicant to construct a reasonably sized deck on the Property which can be reasonably used by the Applicant, his family and guests.

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 April 5, 2016