

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

**IN RE: PAT LEWIS AND KAREN LEWIS**

**(Case No. 11757)**

Hearings were held after due notice on April 18, 2016, and August 15, 2016. The Board members present were: Mr. Dale Callaway, Mr. John Mills, Mr. Jeff Hudson, Mr. Brent Workman, and Mr. Norman Rickard.

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 are seeking a variance of seven (7) feet from the ten (10) feet rear yard setback requirement for a proposed three season room. This application pertains to certain real property located on the east side of Riverwalk Drive in the Beaver Creek subdivision (911 Address: 18841 River Walk Drive, Milton); said property being identified as Sussex County Tax Map Parcel Number 2-35-30.00-517.00.

1. The Board was given copies of the Application, a letter in support of the Application, a portion of the tax map of the area, and a survey dated September 21, 2015.
2. The Board found that the Office of Planning & Zoning had received one letter in support of the Application and no letters in opposition to the Application.
3. The Board found that Pamela McDonald was sworn in to testify about the Application.
4. The Board found that Ms. McDonald testified that she is a contractor with Del-Coast Design & Build hired by the Applicants to construct a three season room. The proposed three season room will measure 16 feet by 20 feet.
5. The Board found that Ms. McDonald testified that the Property is unique as it is irregularly shaped and is shallow in depth.
6. The Board found that Ms. McDonald testified that the existing dwelling takes up most of the building envelope thereby leaving little space for an addition.
7. The Board found that Ms. McDonald testified that Bryton Homes developed the Property and all model homes offered to the Applicants for this lot just fit within the building envelope.
8. The Board found that Ms. McDonald testified that the Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code and there is no alternative location for a three season room.
9. The Board found that Ms. McDonald testified that the variance is the minimum variance to afford relief.
10. The Board found that Ms. McDonald testified that the exceptional practical difficulty was not created by the Applicants.
11. The Board found that Ms. McDonald testified that Bryton Homes told the Applicants an addition could be built at a later date and the Applicants opted out of the three season room during construction of the dwelling due to budget concerns.
12. The Board found that Ms. McDonald testified that the Applicants seek protection from the sun, pollen, and dust. Mrs. Lewis has an aversion to the sun and there is little shade on the Property.
13. The Board found that Ms. McDonald testified that the variance will not alter the essential character of the neighborhood. The structure is similar to other three season rooms in the development.

14. The Board found that Ms. McDonald testified that there is a 20 feet utility easement and fields on property and to the rear of the lot.
15. The Board found that Ms. McDonald testified that the structure will only be partially visible from Lot 21 – which is currently vacant.
16. The Board found that Ms. McDonald testified that the lot to the northeast of the Property is an easement which cannot be developed.
17. The Board found that Ms. McDonald testified that the use will not be detrimental to the public welfare.
18. The Board found that Ms. McDonald testified that a variance was granted in 2015 for a similar situation elsewhere in the neighborhood.
19. The Board found that Ms. McDonald testified that she does not believe that there are other lots in the neighborhood where a three season room could not be built without the need for a variance.
20. The Board found that Ms. McDonald testified that a smaller room is not feasible.
21. The Board found that Ms. McDonald testified that the variance will enable reasonable use of the Property.
22. The Board found that Ms. McDonald testified that 45-50 other homes in the neighborhood have a screen porch or three season room.
23. The Board found that no parties appeared in support of or in opposition to the Application.
24. The Board tabled this Application until May 16, 2016, at which time the Board voted to re-open the case to obtain more information from the developer. The Board directed counsel to send a subpoena to Bryton Homes to appear at a future meeting of the Board. The case was re-noticed and re-advertised and, on August 15, 2016, the Board held a second public hearing on the Application. At that hearing, Pat Lewis and Pam McDonald were sworn in to testify about the Application.
25. The Board found that the Office of Planning and Zoning received one (1) letter of support to the Application and received no correspondence in opposition to the Application.
26. The Board found that Mr. Lewis testified that the Property is adjacent to an existing easement and the rear of the Property is adjacent to farm land.
27. The Board found that Mr. Lewis testified that the sales representative for Bryton Homes stated that a porch could be added later and that, if a variance is needed, he would need to apply.
28. The Board found that Mr. Lewis testified that he was not aware a variance would be needed until Del-Coast Design & Build made him aware of the need for the variance.
29. The Board found that Mr. Lewis testified that he admits he made the mistake by not realizing he did not have 19 feet to the rear of the dwelling to build and that he should have been aware of the setback requirements.
30. The Board found that Mr. Lewis testified that the great room and nook have been expanded and he does not have enough space in the building envelope for the three season room.
31. The Board found that Mr. Lewis testified that the variance will not alter the character of the neighborhood.
32. The Board found that Mr. Lewis testified that the model home the Applicants chose is the largest model offered by the builder which would fit on the lot.
33. The Board found that Mr. Lewis testified that he could have placed a home on the Property with a screen porch. He also could build a porch that measures nine (9) feet deep without a variance.
34. The Board found that Mr. Lewis testified that, if no variance was granted, he would not suffer a hardship. Rather, he wants the variance but does not need it.

35. The Board found that Mr. Lewis testified that the Property is a similar size to other lots in the neighborhood.
36. The Board found that Ms. McDonald testified that the Applicants could have placed a home on the lot with a screen porch and that the Applicants' request is a want rather than a need.
37. The Board found that David Carter and Sheila Setzer were sworn in and testified to represent Bryton Homes after being subpoenaed by the Board.
38. The Board found that Ms. Setzer testified that the dwelling is 18.9 feet from the rear yard property line and the Applicants would have 8.9 feet to build a porch in the building envelope.
39. The Board found that Ms. Setzer testified that the four (4) feet extension the Applicants directed to be built affected the building envelope in the rear yard. During the pre-construction meeting, the Applicants were shown a survey of the Property and the building restriction lines and the survey shows where the dwelling will be located on the Property. Bryton Homes also explains to buyers what is left available to build on the Property after the home is built.
40. The Board found that Mr. Lewis testified that he does not dispute Ms. Setzer's testimony. Unfortunately, he misunderstood and thought he had 18.9 feet to build and did not consider the setback requirements.
41. The Board found that no parties appeared in support of or in opposition to the Application.
42. 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 findings below further support the Board's decision to deny the Application.
  - a. The Board was not convinced that there was some unique physical condition related to the Property which has created an exceptional practical difficulty. The Property is a lot of a similar size to neighboring lots and the Applicants knew or should have known the size of the vacant lot and its building envelope when they acquired the Property. The Applicants decided to build a home on the Property and specifically elected to construct a larger morning room rather than a screen porch when the home was initially constructed. No evidence was presented demonstrating that the Property has some unique, natural feature which has created an exceptional practical difficulty for the Applicants. The survey shows that there is adequate space to build the dwelling and a porch, albeit one smaller than proposed by the Applicants, without a variance. Conversely, the difficulty, if any, appears to be entirely self-created by the Applicants' desire to exceed the setback requirements set forth in the Sussex County Zoning Code by placing the porch in the setback area rather than in the building envelope. Mr. Lewis even admitted that he has created the exceptional practical difficulty.
  - b. The Applicants failed to convince the Board that the Property could not be developed in strict conformity with the Sussex County Zoning Code. Likewise, the Board was not convinced that the variance was necessary to enable the reasonable use of the Property. The Property was a vacant lot and the Applicants constructed a dwelling with a large morning room. The dwelling, as built, already complies with the setback requirements and there is still unused space in the building envelope which could be used for a small porch. It is, thus, clear to the Board that the Applicants do comply with the Sussex County Zoning Code and could construct a porch within the building envelope as well. Rather, the Applicants want to place the porch in the setback area. Ultimately, it is clear to the Board that the Property can be developed in strict conformity with the Sussex County

Zoning Code and that the variance is not necessary to enable reasonable use of the Property.

- c. The Board finds that the Applicants are creating their own exceptional practical difficulty by proposing to construct a porch which does not fit within the building envelope. The Applicants' decision to construct a porch in this location is the reason for the need for a variance and has nothing to do with the size, shape, or condition of the Property. There is no unusual condition to the Property which has created this difficulty. As such, the Board was not convinced that the variance request was the product of a *need*. Instead, the variance request appears to be the product of a *want* as the Applicants seek to build the porch as proposed for purposes of convenience, profit, and / or caprice. Since the Applicants can build a dwelling with porch that can comply the Sussex County Zoning Code, the need for the variance is something created by the Applicants' wants rather than an unusual physical condition relating to the Property. The Applicants have thus created their own exceptional practical difficulty. The Board also notes that the Applicants had a chance to build a porch of the size sought by them but chose to build a larger morning room in lieu of the porch.
- d. Since the variance is not necessary to enable the reasonable use of the Property, the Board also finds that the variance requested is not the minimum variance necessary to afford relief. Furthermore, the Board finds that no variance is necessary to afford relief since there is space to build a reasonably sized dwelling and porch on the Property 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 variance application was denied. The Board Members in favor of the Motion to Deny the Application 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 Deny 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 October 18, 2016.