

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

**IN RE: LINDA S. SHAW, TRUSTEE**

**(Case No. 11766)**

A hearing was held after due notice on May 2, 2016. The Board members present were: Mr. Dale Callaway, Mr. John Mills, Mr. Jeff Hudson, and Mr. Brent Workman.

Nature of the Proceedings

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

Findings of Fact

The Board found that the Applicant is seeking a variance of eight (8) feet from the ten (10) feet side yard setback requirement on the west side for a proposed deck and screen porch. This application pertains to certain real property located on the south side of California Avenue approximately 139 feet east of North Bay Shore Drive (911 Address: 15 California Avenue, Milton); said property being identified as Sussex County Tax Map Parcel Number 2-35-3.12-9.00.

1. The Board was given copies of the Application, drawings of the proposed addition, a portion of the tax map, and a survey of the Property dated November 10, 2015.
2. The Board found that the Office of Planning & Zoning received one (1) letter in opposition to the Application and no letters in support of the Application.
3. The Board found that Linda Shaw and Burt Shaw were sworn in to testify about the Application.
4. The Board found that Ms. Shaw testified that she purchased the Property in November 2015. The Property is located in Broadkill Beach.
5. The Board found that Ms. Shaw testified that she intends to construct a deck and porch addition. The deck will be on the third floor and that the porch will be on the second floor with parking below the porch.
6. The Board found that Ms. Shaw testified that the Property is unique because it is narrow and measures 50 feet wide by 100 feet deep. The septic system is located in the front of the lot and the sand mound for the septic is located in the rear of the Property.
7. The Board found that Ms. Shaw testified that the proposed screen porch and deck will be less intrusive to the neighbor on the west side because the house to the west is on a larger lot and its septic system is near their property line.
8. The Board found that Ms. Shaw testified that the difficulty was not created by the Applicant as she did not construct the dwelling.
9. The Board found that Ms. Shaw testified that the property to the east of the Property has a dwelling almost identical to her dwelling. The existing dwelling is only 11.8 feet from the east side property line and the dwelling on her property is no more than 25 feet from the house to the east of her property.
10. The Board found that Ms. Shaw testified that virtually all of the building envelope on her lot is occupied by the house and septic system.
11. The Board found that Ms. Shaw testified that the dwelling does not have any outdoor living space.
12. The Board found that Ms. Shaw testified that the proposed deck and screen porch will not alter the character of the neighborhood as there are similar porches and decks in the neighborhood. She believes that no views will be blocked by the proposed deck and screen porch.

13. The Board found that Ms. Shaw testified that the variance is the minimum variance to afford relief.
14. The Board found that Ms. Shaw testified that the underground septic lines run from the front to the rear of the Property. The proposed location of the deck and screen porch is to prevent damage to the existing septic lines. She is unable to build a narrower deck due to the septic lines.
15. The Board found that Mr. Shaw testified that the septic lines are approximately four (4) to eight (8) feet from the side of the dwelling and the footers for the proposed deck and screen porch must be at least eighteen (18) inches from the septic lines. As such, the deck would have to either be three (3) feet wide or ten (10) feet wide so as not to disrupt the septic lines.
16. The Board found that Chris Burke was sworn in and testified in opposition to the Application and testified that he lives across the street. Mr. Burke owns a deck which complies with the setback requirements.
17. The Board found that Chris Burke testified that the Property is not unique since most of the lots in Broadkill Beach measure 50 feet by 100 feet.
18. The Board found that Chris Burke testified that the Property was sold at a lower price because it did not have a deck and the Applicant was aware of the situation when she purchased the lot.
19. The Board found that Chris Burke testified that the granting of the variance would set a bad precedent in Broadkill Beach.
20. The Board found that Laurence Burke was sworn in and testified in opposition to the Application. He testified that he believes the request is a want and not a need.
21. The Board found that no parties appeared in support of the Application.
22. The Board found that two (2) parties appeared in opposition to the Application.
23. The Board tabled its discussion and vote on the Application until May 16, 2016. Mr. Rickard was present for the discussion and vote. Mr. Rickard previously listened the testimony and reviewed the record.
24. 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 Applicant 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 is a lot already consisting of a septic system and a dwelling. The dwelling, though placed on the Property by a prior owner, complies with the setback requirements and there was no evidence that the dwelling was not usable. The dwelling is 11.8 feet from the side property lines on each side but the Applicant wants to construct a deck and porch on the west side of the Property and the addition would be very close to the adjacent property. The Applicant argued that she has no outdoor living space and the addition would provide her with that space but the Board was not convinced that the Property was not otherwise being reasonably used. The dwelling on the Property is clearly being used. Furthermore, based on the review of the survey, a portion of the proposed deck would be constructed within the building envelope in the rear yard. This deck would afford the Applicant with some outdoor living space she desires even if she may have to alter her construction plans to do so. Ultimately, it is clear to the Board that the Property has been and 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.

- b. The Board finds that the Applicant is creating her own exceptional practical difficulty by proposing to construct a porch and deck which does not fit within the building envelope. The Applicant's decision to construct a porch and dwelling 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. 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 Applicant seeks to build the deck and porch as proposed for purposes of convenience, profit, and / or caprice. Since the Applicant's existing dwelling already complies with the Sussex County Zoning Code, the need for the variance is something created by the Applicant's wants rather than an unusual physical condition relating to the Property. The Applicant has thus created her own exceptional practical difficulty.

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

Date July 13, 2016.