

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: RUTH ANN CROVETTO

(Case No. 11781)

A hearing was held after due notice on June 6, 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 6.13 feet from the twenty (20) feet rear yard setback requirement for an existing deck. This application pertains to certain real property located on the south side of Mallard Drive approximately 200 feet west of Bay Drive (911 Address: 5 Mallard Drive, Lewes); said property being identified as Sussex County Tax Map Parcel Number: 2-34-12.00-121.00.

1. The Board was given copies of the Application, an elevation certificate, a portion of the tax map of the area, an aerial photograph of the area, and an undated survey of the Property.
2. The Board found that the Office of Planning & Zoning received no correspondence in support of or in opposition to the Application.
3. The Board found that David Wilkins was sworn in to testify about the Application and submitted a copy of the building plans to the Board to review.
4. The Board found that Mr. Wilkins testified that, in July 2015, he surveyed the Property for the builder. The survey indicated the rear yard setback requirement was ten (10) feet from the property line which is consistent with the rear yard setback requirements in the restrictive covenants. He did not know the Sussex County Zoning Code was more restrictive than the restrictive covenants. The builder relied on the erroneous survey when placing the dwelling and deck on the lot. He takes responsibility for the encroachment because of the incorrect survey.
5. The Board found that Mr. Wilkins testified that the previous dwelling was demolished.
6. The Board found that Mr. Wilkins testified that the new dwelling had to be placed away from the existing septic system which is in the front of the Property.
7. The Board found that Mr. Wilkins testified that the deck is placed on concrete pillars and measures 12 feet by 20 feet.
8. The Board found that Mr. Wilkins testified that the Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code, due to the existing septic system.
9. The Board found that Mr. Wilkins testified that the Property was created prior to the enactment of the Sussex County Zoning Code.
10. The Board found that Mr. Wilkins testified that the Property is a waterfront property and is unique.
11. The Board found that Mr. Wilkins testified that the exceptional practical difficulty was not created by the Applicant or the builder.
12. The Board found that Mr. Wilkins testified that the variance does not alter the essential character of the neighborhood. There are other structures which intrude into the setback areas in the development.

13. The Board found that Mr. Wilkins testified that the variance requested is the minimum variance to afford relief.
14. The Board found that no parties appeared in support of or in opposition to the Application.
15. The Board tabled its decision on the Application until June 20, 2016, at which time it discussed and voted on 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 as it is a small, waterfront lot with a septic system. These conditions limit the available area for the placement of a dwelling and deck on the lot. The situation is also unique because the Applicant's builder relied on a survey which incorrectly identified the rear yard setback line. The builder then placed the dwelling and deck on the lot under the mistaken belief that the deck complied with the Sussex County Zoning Code. The unique characteristics of the lot and the surveying error have created an exceptional practical difficulty for the Applicant who seeks to retain a reasonably sized deck on the Property.
 - b. Due to the uniqueness of the lot and the situation, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property has a small and unique building envelope. The Applicant seeks to retain a deck of a reasonable size but is unable to do so without violating the Sussex County Zoning Code. The deck was constructed on concrete pillars and cannot be moved without great and unnecessary expense. The variance is thus necessary to enable reasonable use of the Property as the variance will allow a reasonably sized deck to remain on the Property. The Board is convinced that the shape and location of this deck are also 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 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 the survey. The difficulty was exacerbated by the erroneous survey prepared by the Applicant's builder's surveyor. This survey incorrectly listed the rear yard setback area and, as a result, the deck was placed in error. The Board finds that the Applicant reasonably (yet detrimentally) relied on her builder and its surveyor to place the deck and home on the Property in strict conformity with the Sussex County Zoning Code. The Board is convinced that the exceptional practical difficulty was not created by the Applicant but was created by the lot's unique characteristics and the surveying error.
 - 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 is located in the rear of the Property adjacent to a lagoon. 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

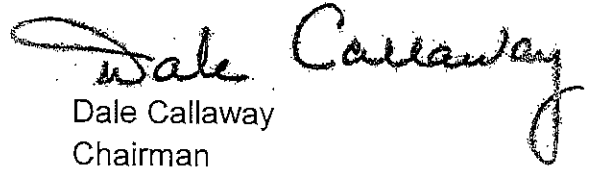
the regulation at issue. The Applicant has demonstrated that the variance sought will allow the Applicant to retain a reasonably sized deck on the Property. No additions to the deck are proposed.

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 August 16, 2016.