

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: MARTIN R. SPINDLER & K. NOEL SPINDLER

(Case No. 11792)

A hearing was held after due notice on July 11, 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 Applicants are seeking a variance of 9.4 feet from the twenty (20) feet rear yard setback requirement for an existing deck. This application pertains to certain real property located on the north side of Jahnigen Drive within the Hamlet at Dirickson Pond off Bayard Drive. (911 Address: 36846 Jahnigen Drive, Frankford); said property being identified as Sussex County Tax Map Parcel Number 5-33-11.00-432.00.

1. The Board was given copies of the Application, a portion of the tax map of the area, a survey of the Property dated February 25, 2016, a building permit dated April 22, 2008, an application for a Certificate of Compliance, a Certificate of Compliance, a letter from Caryl Hinczynski, 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 Edward Hinczynski was sworn in to testify about the Application. Raymond Tomasetti, Jr., Esquire, presented the case to the Board on behalf of the Applicants and submitted exhibits, including pictures, for the Board to review.
4. The Board found that Mr. Tomasetti stated that Mr. Hinczynski is the seller of the Property and the Applicants are purchasing the Property.
5. The Board found that Mr. Tomasetti stated that the Property is unique in size and shape and the rear yard of the Property curves in towards the existing dwelling.
6. The Board found that Mr. Tomasetti stated that the Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code.
7. The Board found that Mr. Tomasetti stated that a building permit and Certificate of Compliance were obtained for the deck.
8. The Board found that Mr. Tomasetti stated that the Homeowners Association approved the existing deck.
9. The Board found that Mr. Tomasetti stated that the sellers were unaware of any encroachments on the Property.
10. The Board found that Mr. Tomasetti stated that the Applicants did not create the difficulty.
11. The Board found that Mr. Tomasetti stated that the variance will not alter the character of the neighborhood. There are similar decks in the area in rear yards.
12. The Board found that Mr. Tomasetti stated that the variance sought is the minimum variance to afford relief.
13. The Board found that Mr. Hinczynski, under oath, affirmed the statements made by Mr. Tomasetti.
14. The Board found that Mr. Hinczynski testified that he was not aware of the encroachment and that he relied on his builder to build the deck in compliance with the Sussex County Zoning Code.

15. The Board found that no parties appeared in support of or in opposition to 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 has an unusually shaped rear yard. This unique shape of the Property has created an oddly shaped and unusual building envelope. The situation is also unique because a previous owner relied on a builder to construct the deck in compliance with the Sussex County Zoning Code and received a certificate of compliance evidencing said compliance only to later find out that the deck did not comply with the Code. The unique characteristics of the lot and the error in construction (and issuance of a certificate of compliance) have created an exceptional practical difficulty for the Applicants who seek to retain an existing 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 building envelope due to the unusual shape of the rear yard. The Applicants seek to retain a deck of a reasonable size but are unable to do so without violating the Sussex County Zoning Code. 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 Applicants.
 - c. The exceptional practical difficulty was not created by the Applicants. The Applicants did not create the unique 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 the survey. The difficulty was exacerbated by error in construction by the builder who placed the deck into the setback area. Notably, the deck was constructed by a prior owner and not the Applicants. The Board is convinced that the exceptional practical difficulty was not created by the Applicants but was created by the lot's unique characteristics and by the error in construction by a prior owner.
 - 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 pond. There will be no dwelling constructed on the adjacent rear lot. The Board notes that the homeowners association support of the Application. The deck has also been in its present location for several years yet 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. The evidence also demonstrates that there are other similar decks in the neighborhood.
 - 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 Applicants have demonstrated that the variance sought will allow the Applicants to retain a reasonably sized deck on the Property and that no additions thereto are being sought.

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 September 13, 2016.