

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: SALLY LAUX & SUE BARDSLEY

(Case No. 11815)

A hearing was held after due notice on August 1, 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 side yard setback requirement.

Findings of Fact

The Board found that the Applicants are seeking a variance of five (5) feet from the fifteen (15) feet corner side yard setback requirement for a proposed second-story deck. This application pertains to certain real property located on the northeast corner of North Bay Shore Drive and Georgia Avenue (911 Address: 702 North Bay Shore Drive, Milton); said property being identified as Sussex County Tax Map Parcel Number 2-35-3.16-62.00.

1. The Board was given copies of the Application, a portion of the tax map, and a survey of the Property dated April 4, 2016.
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 Sally Laux and Sue Bardsley were sworn in to testify about the Application.
4. The Board found that Ms. Laux testified that the Applicants are building a new dwelling on the Property.
5. The Board found that Ms. Laux testified that the Property is unique due to its narrowness and the Property cannot be otherwise developed in strict conformity with the Sussex County Zoning Code, since the required setbacks will only allow for a twenty-five (25) feet wide structure.
6. The Board found that Ms. Laux testified that the proposed deck cannot be built without a variance.
7. The Board found that Ms. Laux testified that difficulty was not created by the Applicants.
8. The Board found that Ms. Laux testified that the variance will not alter the character of the neighborhood and the use will not be detrimental to the public welfare.
9. The Board found that Ms. Laux testified that the variance requested is the minimum variance to afford relief.
10. The Board found that Ms. Laux testified that the deck cannot be built on the Bay Shore Drive side of the Property and still have a view of the water. There is, however, a small deck proposed to be constructed in the front yard.
11. The Board found that Ms. Laux testified that that the Applicants did not consider placing the deck to the rear yard of the Property.
12. The Board found that Ms. Laux testified that the dwelling has not yet been constructed.
13. The Board found that Ms. Laux testified that the first level of the deck will serve a multi-purpose area on the first level of the dwelling and the second level of the proposed deck will be accessed off the kitchen and living room area. The first floor of the deck will be elevated.
14. The Board found that Ms. Laux testified that the edge of paving of Georgia Avenue abuts to the property line of the Property.

15. The Board found that Ms. Laux testified that the deck will not block any views on Georgia Avenue but if other houses along Georgia Avenue built decks in a similar location, the Applicants' views of the water would be blocked.
16. The Board found that Ms. Laux testified that the location of the proposed deck will not block any neighbor's views of the water.
17. The Board found that Ms. Laux testified that the Applicants did not explore moving the dwelling elsewhere on the lot.
18. The Board found that Ms. Laux testified that the septic system is located at the front of the Property.
19. The Board found that no parties appeared in support of or in opposition to the Application.
20. 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 two-story home and deck on pilings on the Property. No evidence was presented demonstrating that the Property has some unique, natural feature which has created an exceptional practical difficulty for the Applicants. The Applicants noted that the septic system presents some challenges but the survey clearly shows that the septic drain field only encroaches a small area into the building envelope. The survey shows that there is adequate space to build the dwelling and a deck 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 deck in the setback area rather than in the building envelope.
 - 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 is a vacant lot and the Applicants propose to construct a dwelling with a deck. The dwelling, as proposed, would comply with the setback requirements and there is still unused space in the building envelope; particularly in the front yard near Bay Shore Drive. The dwelling is 16 feet from the corner side property lines adjacent to Georgia Avenue but the Applicants want to construct a deck on that side of the Property and the deck would encroach significantly into the setback area. In fact, almost the entire deck would be placed in the setback area. Notably, this deck is a 2 story deck on pilings. The Applicants did not explore other options to place the deck, such as moving the dwelling closer to the front yard and placing the deck in the rear yard. Likewise, there appears to be space in the front yard for a large deck (certainly room for a deck larger than the one proposed in that location by the Applicants). It is, thus, clear to the Board that the Applicants could construct the proposed dwelling in compliance with the Sussex County Zoning Code and construct a reasonably sized deck within the building envelope. Rather, the Applicants want to place the deck in the setback area not for the singular purpose of having a deck for outdoor living space but so that they can have a deck that will provide views of the water. The Board agrees that it would be impossible for a deck built in the front yard to have water views as the

proposed dwelling would block the views of the water. The Board was not convinced, however, that a deck built in the rear yard would have no water views since the rear yard faces the water. Even if those views were blocked in the rear yard, the inability of the Applicants to see the water from their deck does not render the variance necessary to enable reasonable use of the Property. The variance would then only be necessary to provide the Applicants water views of the Property. As previously noted, the building envelope clearly allows enough space for a dwelling and deck space; just not deck space in the place where the Applicants want it to be placed. The limited views of the water from the Property should not be surprising to the Applicants as the tax map clearly shows that there are three lots between the Property and the water. It is reasonable to assume that, unless the other three lots were vacant and unbuildable, any view of the water from the Property would be limited. Of course, if the owners of those three lots obtained variances which would allow them to place decks as close to Georgia Avenue as the Applicants propose, the Applicants' view of the water would be blocked then as well. It is thus difficult to see why the Applicants should be allowed to build into this setback area; particularly when there is sufficient space in the building envelope for a dwelling and deck. 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 deck which does not fit within the building envelope. The Applicants' decision to construct a deck 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 deck as proposed for purposes of convenience, profit, and / or caprice. Since the Applicants can build a dwelling with deck 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.
- 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 deck 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. Norman Rickard, and Mr. Brent Workman. Mr. John Mills 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 4, 2016