

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: KRIS S. MECK

(Case No. 11964)

A hearing was held after due notice on June 5, 2017. The Board members present were: Mr. Dale Callaway, Ms. Ellen Magee, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for variance from the rear yard setback requirements.

Findings of Fact

The Board found that the Applicant is seeking a variance of 7.1 feet from the twenty (20) feet rear yard setback requirement for a proposed enclosed deck addition and a variance of 9.9 feet from the twenty (20) feet rear yard setback requirement for a dwelling. This application pertains to certain real property located on the south side of Linden Way approximately 404 feet south of Woodland Circle, Angola By the Bay (911 Address: 23046 Linden Way, Lewes); said property being identified as Sussex County Tax Map Parcel Number 2-34-11.20-355.00

1. The Board was given copies of the Application, a portion of the tax map of the area, a survey of the Property dated March 14, 2017, an aerial photograph of the Property, Findings of Fact for Case No. 11438, and drawings of the proposed addition.
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 Kris Meck was sworn in to testify about the Application.
4. The Board found that Mr. Meck testified that he proposes to extend the existing deck and create a closed in deck covered with a roof. The original deck was not enclosed.
5. The Board found that Mr. Meck testified that the Property is located in Angola by the Bay and the Applicant has received approval from the homeowners association. Neighbors also support the Application.
6. The Board found that Mr. Meck testified that the Property is pie shaped which makes it unique and, due to the unique shape, the home had to be moved closer toward the rear yard.
7. The Board found that Mr. Meck testified that the community was first developed for manufactured homes and newer homes are not supported by the lots in the community.
8. The Board found that Mr. Meck testified that the Applicant did not create the exceptional practical difficulty.
9. The Board found that Mr. Meck testified that the home was designed to comply with the design of other homes in the neighborhood.
10. The Board found that Mr. Meck testified that the variance requested is the minimum variance necessary to afford relief.
11. The Board found that Mr. Meck testified that the proposed addition will be constructed off of the existing deck and the addition to the deck will not extend farther into the rear yard than the existing home. The addition will also blend in with the existing home.
12. The Board found that Mr. Meck testified that there is a wooded area in the rear yard and there is a common area in the rear yard that is forty (40) to fifty (50) feet wide. The home cannot be seen from the homes in the rear that are located on the other side of the common area.

13. The Board found that the Applicant previously received a variance in 2014 of 9.72 feet from the rear yard setback requirement for a proposed dwelling. The new survey provided by the Applicant demonstrates that the dwelling is actually 10.1 feet from the rear yard setback so a variance of 9.9 feet is actually needed for the dwelling to comply with the Sussex County Zoning Code.
14. The Board found that one (1) party appeared in support of the Application.
15. The Board found that no parties appeared 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 unrebutted, 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 situation is unique as the Applicant obtained a variance in 2014 for the construction of a dwelling. Thereafter, the Applicant constructed the dwelling on the Property. The Applicant later decided to enclose his deck and, through the process of seeking a variance for the deck, the Applicant discovered that the dwelling was placed mere inches into the setback area closer than previously allowed. Notably, the additional encroachment into the rear yard setback is only 0.18 feet. The Board also notes that the Property is located in the Angola by the Bay development and is uniquely shaped. The Property has curved front and rear yard property lines and is pie-shaped. This unusual shape has created an odd and limited building envelope. The building envelope is further limited by the small shape of the lot. The Property consists of only 12,857 square feet. The Property is also adjacent to common area thereby giving the rear yard the appearance that it is larger than it actually is. The Board finds that the unique characteristics of this Property and the situation have limited the buildable area available to the Applicant and have created an exceptional practical difficulty for the Applicant who seeks to retain a dwelling and enclose a deck on the lot.
 - 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 buildable area due to its odd shape and small size. The Applicant seeks to retain a dwelling of a reasonable size and to construct a reasonably sized enclosed deck but is unable to do so without violating the Sussex County Zoning Code. The Board is convinced that the variances are necessary to enable the reasonable use of the Property as the variances will allow a reasonably sized dwelling to remain and for the Applicant to enclose and expand the existing deck on the Property. The Board is convinced that the shape and location of the dwelling and deck are also reasonable, which is confirmed when reviewing the survey provided by the Applicant. The Board also notes that the dwelling has been its existing location for at least 2 years and cannot be moved elsewhere on the lot.
 - c. The exceptional practical difficulty was not created by the Applicant. The Property, which is not particularly large, is constrained due to its small size and unique shape. The Applicant obtained a variance in 2014 for the dwelling and constructed the dwelling in good faith that it complied with the Sussex County Zoning Code. Only when a new survey was completed in 2017 did the Applicant learn of that the dwelling actually encroached an additional 0.18 feet into the setback area. The Applicant also seeks to create a small addition and enclose his existing deck. If the Property were not so small and did not have this unusual shape, the Applicant would otherwise be able to do so without issue. The Board is convinced that the exceptional practical difficulty was not created by the Applicant but was created the lot's unique characteristics and the unique situation.

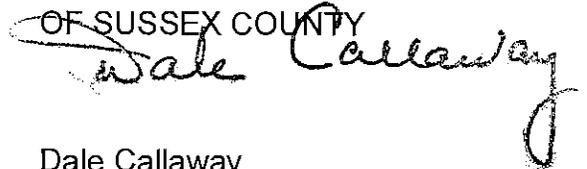
- d. The variances will not alter the essential character of the neighborhood nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare. The Board is convinced that the dwelling will have no effect on the character of the neighborhood. The dwelling has been in its existing location for more than 2 years and no complaints have been noted in the record about its location. If some adverse impact on the character of the neighborhood existed, the Board would expect some evidence to that effect. Rather, no such evidence was presented which would indicate that the variances would somehow alter the essential character of the neighborhood or be detrimental to the public welfare. Likewise, the deck will not alter the essential character of the neighborhood. The unrebutted testimony confirms that there are other decks in the area and the deck will be constructed to appear consistent with other decks and dwellings in the area. The Board also notes that the dwelling and deck are adjacent to common land in the rear yard. It is unlikely that the encroachment into the rear yard is even noticeable.
- e. The variances sought are the minimum variances necessary to afford relief and the variances requested represent the least modifications possible of the regulations at issue. The Applicant has demonstrated that the variances sought will allow the Applicant to retain a reasonably sized dwelling and to construct a reasonably sized addition over an existing deck on the Property. The addition will extend no farther than the existing house.

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, Ms. Ellen Magee, 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 8, 2017