

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

**IN RE: JAMES D. SHERLOCK & JENNIFER A. SHERLOCK**

**(Case No. 11965)**

A hearing was held after due notice on June 5, 2017. The Board members present were: Mr. Dale Callaway, Mr. John Mills, Ms. Ellen Magee, 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 11.3 feet from the twenty (20) feet rear yard setback requirement for a proposed deck addition. This application pertains to certain real property located on the northeast side of Linden Drive approximately 568 feet east of Sycamore Drive, Angola By the Bay (911 Address: 22923 Linden Drive, Lewes); said property being identified as Sussex County Tax Map Parcel Number 2-34-11.16-50.00

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 2, 2017, a survey of the Property dated April 1, 2016, assessment records, and an aerial photograph 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 James Sherlock was sworn in to testify about the Application. Mr. Sherlock submitted a deck plan dated May 12, 2017.
4. The Board found that Mr. Sherlock testified that he purchased the home three (3) years ago.
5. The Board found that Mr. Sherlock testified that the house includes a deck measuring eight (8) feet wide which is in disrepair. The existing deck is poorly attached and incorrectly installed and water flows into the rim joists. The Applicants propose to lower the deck 14 inches and anchor the deck to concrete. The deck will also be widened to accommodate steps and a landing.
6. The Board found that Mr. Sherlock testified that the proposal will alleviate flooding problems with their basement.
7. The Board found that Mr. Sherlock testified that the Property is a pie shaped lot and is located in Angola by the Bay. There is common area to the rear of the Property.
8. The Board found that Mr. Sherlock testified that the Applicants did not create the exceptional practical difficulty.
9. The Board found that Mr. Sherlock testified that the deck was existing on the Property when they purchased the lot and that the Applicants are trying to rectify the situation. The Applicants are concerned about the safety of the deck.
10. The Board found that Mr. Sherlock testified that the proposed addition will not alter the essential character of the neighborhood and the deck will improve the neighborhood. The homeowners association has approved the proposal.
11. The Board found that Mr. Sherlock testified that the deck is so small that it is unusable and cannot even accommodate a table and chairs.
12. The Board found that Mr. Sherlock testified that he would be satisfied with a narrower deck of 14 feet.
13. The Board found that Mr. Sherlock testified that the proposed addition will grant them entrances to the deck from both sides.
14. The Board found that no parties appeared in support of or in opposition to the Application.


15. The Board tabled the Application until June 19, 2017, at which time the Board 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 has weighed and considered, 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 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 already improved by an existing deck and the Applicants seek to expand the deck beyond its existing footprint. The Applicants argue that the existing deck is unusable due to its width and they expressed safety concerns as well. This argument, however, did not convince the Board that the variances were necessary to enable reasonable use of the Property. The Board notes that the deck was on the Property in its current state when the Applicants purchased the lot three years ago and the Applicants knew, or should have known, about the size limitations of the deck at that time. While the safety concerns expressed by the Applicants are reasonable, the Board was not convinced that those safety concerns could not be adequately addressed within the existing building envelope of the deck. Rather, Mr. Sherlock testified that the Applicants "wanted" to expand the deck and that he would actually prefer a deck less than 14 feet wide but Mrs. Sherlock wanted a wider deck. The Board was simply not convinced that the expansion of the deck was necessary for the Applicants to reasonably use a lot which is already developed (and used) by a dwelling, boardwalk, deck and outdoor shower.
  - b. The Board finds that the exceptional practical difficulty by proposing to expand the deck beyond its existing footprint is self-created. Mr. Sherlock testified that the Applicants wanted the deck to be wider but the Board was not convinced that the deck needed to be wider. 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 owner seeks to place the dwelling as proposed for purposes of convenience and profit, and / or caprice.
  - c. Furthermore, since a smaller deck already exists on the Property and the Board has decided that the variance is not necessary to enable reasonable use of the Property, the Board finds that the variance for the deck is not the minimum variance necessary to afford relief. Rather, no variance for the deck will be needed since the Applicants already have a deck on the Property.

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 were Mr. Dale Callaway, Ms. Ellen Magee, Mr. John Mills, and Mr. Norman Rickard. Mr. Brent Workman 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 August 22, 2017.