

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: MARTHA AUSTIN

(Case No. 12309)

A hearing was held after due notice on June 3, 2019. The Board members present were: Mr. Dale Callaway, Ms. Ellen Magee, Mr. John Mills, Mr. John Williamson, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for variances from the rear yard setback requirement for proposed structures.

Findings of Fact

The Board found that the Applicant is requesting variances of 9 feet from the ten (10) feet rear yard setback requirement for a proposed deck and steps. This application pertains to certain real property located on the southwest side of Beaver Dam Reach in the Woods at Seaside subdivision approximately 0.5 miles east of Munchy Branch Road (911 Address: 116 Beaver Dam Reach, Rehoboth Beach); said property being identified as Sussex County Tax Map Parcel Number 3-34-13.00-1280.00.

1. The Board was given copies of the Application, a survey of the Property dated April 17, 2002, a building proposal, an aerial photograph of the Property, and a portion of the tax map of the area.
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 Martha Austin was sworn in to give testimony about the Application.
4. The Board found that Ms. Austin testified that the Property is unique as the rear property line is only 10 feet from the house and the Property consists of only 7,500 square feet.
5. The Board found that Ms. Austin testified that she would like to age in place and plans to place the deck on the location where a patio currently exists. The Applicant currently has to step down to the patio and the deck will be elevated 18 inches so that she can walk directly to the deck from the house without having to use the steps.
6. The Board found that Ms. Austin testified that the house was a spec home and the developer placed the home on the Property.
7. The Board found that Ms. Austin testified that the variances will not alter the essential character of the neighborhood as there are similar decks and screened porches in the community.
8. The Board found that Ms. Austin testified that the deck needs to be 9 feet deep to allow for seating.
9. The Board found that Ms. Austin testified that the area behind the Property is common space for the community.
10. The Board found that Ms. Austin testified that the variances requested are the minimum variances to make the deck usable and to include some built in seating.
11. The Board found that Ms. Austin testified that she has discussed the Application with her neighbors. The homeowners association has issued her an approval for the deck pending the issuance of a variance by the Board.
12. The Board found that no one appeared in support of or in opposition to the Application.
13. 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.

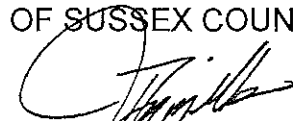
- a. The Property is unique as it was previously developed by a prior owner with a dwelling which takes up a significant portion of the building envelope. The dwelling was built to the rear yard setback line and does not offer the Applicant with space to build to the rear of the home. The Applicant's situation is also unique because she intends to age-in-place and needs to convert the existing patio to a deck so that she can more easily access the outdoor space from her home. These unique conditions limit the buildable area available to the Applicant and have created an exceptional practical difficulty for the Applicant who seeks to construct a deck and steps on the lot.
- b. Due to the uniqueness of the lot and situation, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property has a limited buildable area due to the location of the dwelling on the lot. The Applicant seeks to construct a deck and steps 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 reasonably sized deck and steps to be constructed on the Property. The Board is convinced that the shape and location of the structures are also reasonable, which is confirmed when reviewing the survey provided by the Applicant. The deck will allow the Applicant to have more accessible outdoor space; particularly as she ages in place.
- c. The exceptional practical difficulty was not created by the Applicant. The location of the dwelling has greatly limited the building envelope available to the Applicant. The Board is convinced that the exceptional practical difficulty was not created by the Applicant but was created by construction of the home by a prior owner to the rear of the lot. The Board also notes that the lot is small so the building envelope is limited. The Applicant also intends to age-in-place and the proposed deck and steps will afford her better access to the rear of the property.
- 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 deck and steps will have no effect on the character of the neighborhood. The deck and steps will be located to the rear of the Property and rear of the property is adjacent to common space owned by the homeowners association. The homeowners association has not objected to the relief and neighbors have not opposed the Application either. There was no evidence that the location of the deck and steps in the rear yard setback area would be detrimental to the public welfare and no evidence was presented that the variances would somehow alter the essential character of the neighborhood.
- 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 construct a deck and steps on the Property. The deck is a reasonably sized deck and will afford the Applicant with functional outdoor space in a manner consistent with her existing outdoor patio.

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 of the motion to approve were Mr. Dale Callaway, Ms. Ellen Magee, Mr. John Mills, Mr. John Williamson, and Mr. Brent Workman. No Board Member voted against the Motion to approve the variance application.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY



John Mills
Chairman

If the use is not established within two (2) years from the date below the application becomes void.

Date June 18, 2019.