

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY
IN RE: RONALD SAXTON, BARBARA SAXTON, AND DEBORAH MORGAN
(Case No. 12310)

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

Nature of the Proceedings

This is an application for a variance from the rear yard setback requirement for an existing deck.

Findings of Fact

The Board found that the Applicants are seeking a variance of 7.9 feet from the required 10 feet rear yard setback for an existing deck. This application pertains to certain real property located on the south side of Clover Lane approximately 466 feet east of Bethany Drive in the Bethany Meadows subdivision (911 Address: 38272 Clover Lane, Frankford); said property being identified as Sussex County Tax Map Parcel Number 1-34-17.00-370.00.

1. The Board was given copies of the Application, a survey of the Property dated March 7, 2019, pictures, 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 one letter in support of and no correspondence in opposition to the Application.
3. The Board found that Ronald Saxton sworn in to give testimony about the Application.
4. The Board found that Mr. Saxton testified that the house belonged to his late mother. The house was built in 1993 by his parents and the original deck was built at that time.
5. The Board found that Mr. Saxton testified that the builder placed a slider to the rear of the house so a deck was needed.
6. The Board found that Mr. Saxton testified that the deck was replaced on the same footprint as the original deck because the original deck fell into repair.
7. The Board found that Mr. Saxton testified that there have been no complaints from neighbors about the deck.
8. The Board found that Mr. Saxton testified that the Property is unique as it consists of only 7,500 square feet and has a very small back yard.
9. The Board found that Mr. Saxton testified that the Property could not otherwise be developed as there are sliding glass doors at that location on the house.
10. The Board found that Mr. Saxton testified that the exceptional practical difficulty was not created by the Applicants and the variance will not alter the character of the neighborhood as a deck has been in that location since 1993.
11. The Board found that Mr. Saxton testified that the variance requested is the minimum variance request to replace the original deck.
12. The Board found that Mr. Saxton testified that there is a homeowners association.
13. The Board found that no one appeared in support of or in opposition to the Application.
14. 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 is a small lot consisting of 7,500 square feet and was developed by a previous owner with a deck in 1993. The deck has since been replaced. Due to the small size of the lot, the building envelope is limited and creates an exceptional practical difficulty for the Applicants who seek to retain a deck on the lot. The situation is also unique as the house includes a sliding door and a deck off the sliding door is a natural part of the home. This error, however, was not discovered until many years after the original deck was constructed.
- 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 limited buildable area due its size and the location of the dwelling on the lot. The Applicants seek to retain a deck but are 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 to be retained on the Property. The Board is convinced that the shape and location of the 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 size of the lot and the location of the dwelling have greatly limited the building envelope available to 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. The Applicants also did not place the original deck on the Property. Rather, that deck was placed on the lot by a prior owner; as was the house.
- 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 is located to the rear of the Property and the neighbor to the rear did not note an objection to the request in the record. There was no evidence that the location of the deck in the rear yard setback area would somehow affect the neighborhood and no evidence was presented that the variance would somehow alter the essential character of the neighborhood. The lack of evidence is telling since a deck has been on the Property in this location for many years.
- 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. No additions or modifications to the deck are proposed.

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, Mr. John Mills, Mr. John Williamson, and Mr. Brent Workman. No Board Member voted against the Motion to approve the variance application. Ms. Ellen Magee did not participate in the vote on this 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