

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: PAULA HORN & JEFFREY HORN

(Case No. 12467)

A hearing was held after due notice on September 14, 2020. The Board members present were: Dr. Kevin Carson, Mr. Jeff Chorman, Ms. Ellen Magee, Mr. John Williamson, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for a variance from the side yard setback requirement for a proposed structure.

Findings of Fact

The Board found that the Applicants are requesting a variance of 6.5 feet from the 10 feet side yard setback requirement on the northwest side for a proposed deck. This application pertains to certain real property located on the west side of Riverwalk Drive within the Beaver Creek subdivision (911 Address: 18852 Riverwalk Drive, Milton) said property being identified as Sussex County Tax Map Parcel Number 2-35-30.00-637.00. After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a letter from Jeffrey Horn, a survey of the Property, photographs, 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 and one (1) letter in opposition to the Application.
3. The Board found that Jeffrey Horn and Paula Horn were sworn in to testify about the Application.
4. The Board found that Mr. Horn testified that the Applicants purchased their home with an existing patio and paid a premium to have a view of the pond.
5. The Board found that Mr. Horn testified that the request for a variance is because the Applicants wish to build a deck above the existing patio with an additional 18 inches to allow for footers for the proposed deck.
6. The Board found that Mr. Horn testified that the deck will not interfere with neighbors sight lines.
7. The Board found that Mr. Horn testified that the Property is unique as the house was placed far back on the lot and the rear yard abuts the neighbor's side yard.
8. The Board found that Mr. Horn testified that the patio was existing and there is no alternative construction that would afford relief.
9. The Board found that Mr. Horn testified that the need for the variance was not created by the Applicants as the adjacent property built a sunroom which impedes sunlight from reaching the subject property.
10. The Board found that Mr. Horn testified that the variance requested is the minimum variance necessary to afford relief.
11. The Board found that Mr. Horn testified that granting the variance will not alter the essential character of the neighborhood.
12. The Board found that Mr. Horn testified that the deck will measure 35 feet by 11.5 feet and the deck will be 3.5 feet from the side property line. Steps to the deck will not require a variance.
13. The Board found that Mr. Horn testified that there is no flooding on the lot.
14. The Board found that Mr. Horn testified that his neighbor to the northwest supports the request.
15. The Board found that no one appeared in support of or opposition to the Application.

16. The Board voted to leave the record open for the limited purpose of allowing staff to research the permit history for the adjacent property and to report back to the Board on September 21, 2020. At that meeting, Planning & Zoning Director Jamie Whitehouse stated that the owner of the neighboring property at 18848 Riverwalk Drive was issued a permit in June 2019 for a screen porch and that the drawing submitted as part of the permit included a 5 foot wide unenclosed deck adjacent to the screen porch. A certificate of occupancy for those structures was issued on August 13, 2019, following a final inspection by Planning and Zoning.
17. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, which the Board 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 demonstrate that the Property was unique and that the uniqueness of the Property has created an exceptional practical difficulty. The lot is already developed with a house and patio. The Applicants, however, seek to build a deck above the patio and to extend the deck beyond the allowable setback requirement. The Applicants noted in the Application that they seek this variance because their neighbor to the northwest constructed a porch and deck and those structures block the Applicants' view of the nearby pond. The neighbor, however, constructed those improvements in compliance with the Code. In presenting this Application, the Applicants failed to provide substantial evidence of unique topography or other conditions which would effectively limit their ability to develop the Property and which created an exceptional practical difficulty. Rather, the difficulty is clearly the result of the Applicants' intention to construct a deck outside the building envelope. The Board also notes that the deck will be wider because the Applicants do not wish to install footers on the patio.
 - b. The Applicants failed to prove that the Property could not be developed in strict conformity with the Sussex County Zoning Code. The lot is already improved with a house and patio. The Applicants propose to construct a deck on this lot and the deck will encroach into the side yard setback area. The Applicants failed to demonstrate that there was no other way to reasonably develop the lot without a variance. Furthermore, the Board was simply not convinced that the Applicants could not otherwise place a deck on the Property in compliance with the Code. Perhaps the deck would not be in the exact location where the Applicants want it to be located or be as large as the Applicants want but the Property appears to have a large enough building envelope for the Applicants to construct a reasonably sized deck in compliance with the Sussex County Zoning Code. For these reasons, the Board finds that the Property could be developed in strict conformity with the 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 this 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. The Property is already developed and, even if a deck was necessary, the building envelope appears to otherwise be able to fit a deck without the need for the variance. 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 Property is already developed and the Applicants can build a 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.

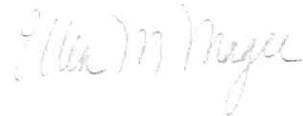
- d. Since the variance is not necessary to enable the reasonable use of the Property, the Board also finds that the variance requested is not the minimum variance necessary to afford relief. Furthermore, the Board finds that no variance is needed to afford relief since there is space to build a reasonably sized 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 were Dr. Kevin Carson, Mr. Jeffrey Chorman, Ms. Ellen Magee, Mr. John Williamson, and Mr. Brent Workman. No Board Member voted against the Motion to deny the variance application.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY



Ellen M. Magee
Chair

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

Date November 16, 2020.