

**BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY  
IN RE: TROY ROHRBAUGH & ALICE ROHRBAUGH**

**(Case No. 12470)**

A hearing was held after due notice on September 21, 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 variances from the rear yard setback requirements for proposed structures.

Findings of Fact

The Board found that the Applicants are requesting a variance of 2 feet from the ten (10) foot rear yard setback requirement for a two-level deck and a variance of 1.1 feet from the ten (10) foot rear yard setback requirement for a two-level deck. The application pertains to certain real property located on the southeast side of Owens Court within The Curves subdivision (911 Address: 40116 Owens Court, Fenwick Island); said property being identified as Sussex County Tax Map Parcel Number 1-34-22.00-7.05. After a public hearing, the Board made the following findings of fact.

1. The Board was given copies of the Application, a survey of the Property dated March 16, 2015, pictures, drawings, 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 three (3) letters in support of or in opposition to the Application.
3. The Board found that Amy Rohrbaugh and George Campbell were sworn in to testify about the Application.
4. The Board found that Ms. Rohrbaugh testified that the proposal is for a second-level deck to replace an older deck. The new deck will extend 2 feet beyond the prior deck and is above a first-floor deck.
5. The Board found that Ms. Rohrbaugh testified that the original deck fell apart due to dry rot.
6. The Board found that Ms. Rohrbaugh testified that she spoke with neighbors about the request and they do not object.
7. The Board found that Ms. Rohrbaugh testified that the additional area on the decks will allow her in-laws to enjoy the outdoors without having to walk out to the beach and that the additional space will allow for safer navigation.
8. The Board found that Ms. Rohrbaugh testified that the deck cannot be seen from the street.
9. The Board found that Ms. Rohrbaugh testified that the lot is a unique beachfront lot and the variance will allow the reasonable use of the property with maximized deck area to accommodate aging family members.
10. The Board found that Ms. Rohrbaugh testified that the exceptional practical difficulty is not been created by the Applicants but by the need for additional space to allow for aging parents to enjoy outdoor living space by providing additional space for navigation.
11. The Board found that Ms. Rohrbaugh testified that granting the variance will not alter the essential character of the neighborhood as it cannot be viewed from the street.
12. The Board found that Ms. Rohrbaugh testified that the variances requested are the minimum variances to allow the upper deck to mirror the lower deck and allow full navigation and reasonable use of the outdoor space.

13. The Board found that Ms. Rohrbaugh testified that the deck was placed by a prior owner and needed to be replaced due to dry rot.
14. The Board found that Mr. Campbell testified that each deck will measure 50 feet by 10 feet.
15. The Board found that Ms. Rohrbaugh testified that the deck is similar to neighboring decks.
16. The Board found that Ms. Rohrbaugh testified that the house was built by a prior owner and they cannot move 2 feet towards the front yard.
17. The Board found that three people appeared in support of and no parties appeared in opposition to the Application.
18. 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 Property is unique as it is narrow, ocean-front property. The house, which was built by a prior owner, is located close to the rear yard property line and the existing deck needed to be replaced due to dry rot. The existing development of the lot prior to the Applicants' purchase thereof has limited the building envelope. The house does not parallel the rear property line also. The Applicants need additional space on the deck due to physical problems by family members who cannot access the beach. The lot's unique conditions limit the buildable area available to the Applicants and have created an unnecessary hardship and an exceptional practical difficulty for the Applicants who seek to construct a two-level deck. The slightly larger deck is needed to provide safe space on the deck for family members to navigate.
  - b. The unnecessary hardship and exceptional practical difficulty are not being created by the provisions of the Sussex County Zoning Code.
  - c. 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 shape and the buildable area thereof is limited due to the size and shape of the lot. The Applicants seek to construct a two-level 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 the reasonably sized two-level deck to be constructed on the Property. The Board is convinced that the shape and location of the two-level deck is also reasonable, which is confirmed when reviewing the survey provided by the Applicants. The Board notes that the two-level deck will provide the Applicants' family members with a safe outdoor space and that the slightly larger deck is needed for those family members to reasonably use the Property.
  - d. The unnecessary hardship and exceptional practical difficulty were not created by the Applicants. The Applicants did not create the unusual shape or size of the Property or build the house so close to the rear property line. The unique size and shape of the Property is clear when reviewing the survey. The Board is convinced that the unnecessary hardship and exceptional practical difficulty were not created by the Applicants but was created by the lot's unique characteristics and the need for the larger deck due to physical problems of family members.
  - e. 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 two-level deck will have no effect on the character of the neighborhood. The two-level deck will be erected in the location of an existing deck and is only slightly larger than the prior deck. There are other similar decks in the neighborhood as well. 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 variances would somehow alter the essential character of the neighborhood or be detrimental to the public welfare. The Board also notes that neighbors support the request.

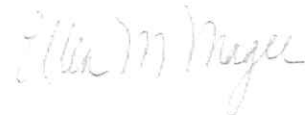
- f. The variances sought are the minimum variances necessary to afford relief and the variances requested represent the least modifications possible of the regulations at issue. The Applicants have demonstrated that the variances sought will allow the Applicants to construct a reasonably sized two-level deck on the Property. The deck will be located in the location of an existing deck and the Applicants have minimized the deck size to allow for reasonable use while minimizing the encroachment into the rear yard. The Applicants have also designed the deck so that no variance is needed for steps from the deck.
- g. The condition or situation of the Property and the intended use of the Property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the Sussex County Zoning Code.

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 Dr. Kevin Carson, Mr. Jeffrey Chorman, Ms. Ellen Magee, 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



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