

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: JYOTI A. TULSIAN & KELSY SWEARER

(Case No. 12533)

A public hearing was held after due notice on March 1, 2021. The Board members present were: Dr. Kevin Carson, Mr. Jeff Chorman, Mr. John T. Hastings, Mr. John Williamson, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for variances from the front yard setback requirement for existing structures.

Findings of Fact

The Board found that the Applicants are requesting a variance of 9.7 feet from the forty (40) feet front yard setback requirement for existing steps and a variance of 7.2 feet from the forty (40) feet front yard setback requirement for an existing deck. This application pertains to certain real located on the north side of Oak Orchard Road (Route 5) approximately 245 feet northwest of Delaware Avenue (911 Address: 32681 Oak Orchard Road, Millsboro); said property being identified as Sussex County Tax Map Parcel Number 2-34-34.08-57.01. After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, an aerial photograph of the Property, a survey of the Property dated January 20, 2021, a deed to the Property, an affidavit of Kelsy Swearer, a 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 the Application.
3. The Board found that Jiten Soneji was sworn in to give testimony about the Application. Shannon Carmean Burton, Esquire, presented the Application on behalf of the Applicants.
4. The Board found that Mrs. Burton stated that the Applicants are requesting variances for existing deck and steps.
5. The Board found that Mrs. Burton stated that the Applicants are the new owners of the Property and they entered into contract in November 2020 to purchase the Property, which, at that time was improved by a dwelling and unenclosed deck.
6. The Board found that Mrs. Burton stated that, prior to settlement, the Applicants had a survey prepared and the survey revealed that the deck and steps encroached into the front yard setback area.
7. The Board found that Mrs. Burton stated that the Property is unique as it is a narrow rectangular lot located on Oak Orchard Road and contains approximately 5,176 square feet of land.
8. The Board found that Mrs. Burton stated that the Property is located in a commercial zoning district but used for residential purposes.
9. The Board found that Mrs. Burton stated that the exceptional practical difficulty is due to the uniqueness of the Property and not due to circumstances or conditions generally created by the provisions of the Zoning Code.
10. The Board found that Mrs. Burton stated that the Property cannot be developed in strict conformity with the Zoning Code as it would be necessary to remove the steps and most of the deck which serve as the entrance to the dwelling and that the variances are necessary to enable the reasonable use of the Property.

11. The Board found that Mrs. Burton stated that the dwelling is 40.9 feet from the front property line.
12. The Board found that Mrs. Burton stated that the Applicants did not create the exceptional practical difficulty as they just recently purchased the Property with the existing improvements.
13. The Board found that Mrs. Burton stated that the variances will not alter the essential character of the neighborhood nor substantially or permanently impair the appropriate use of development of adjacent property but will serve as the entrance to the dwelling.
14. The Board found that Mrs. Burton stated that there have been no complaints regarding the location of the deck and steps on the Property.
15. The Board found that Mrs. Burton stated that the variances requested are the minimum variances to afford relief and represent the least modifications possible of the regulation in issue.
16. The Board found that Mrs. Burton stated that the Applicants only seek to bring the existing improvements into compliance with the Zoning Code.
17. The Board found that Mrs. Burton stated that prior owners' tenant, who was later evicted, added the deck without a contractor and that tenant was evicted in 2015.
18. The Board found that Mrs. Burton stated that other homes in the neighborhood are located closer to the road.
19. The Board found that Mrs. Burton stated that the deck has been there approximately 6 years.
20. The Board found that Mr. Soneji affirmed the statements made by Mrs. Burton as true and correct.
21. The Board found that Mr. Soneji testified that he gave verbal permission for his tenants to build the deck and steps in 2014 but he instructed them to obtain the necessary permits.
22. The Board found that Mr. Soneji testified that, until recently, he was unaware that the deck and steps were not in compliance with the Zoning Code.
23. The Board found that no one appeared in support of or in opposition to the Application.
24. 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 in size, shape, and development. The lot consists of only 5,176 square feet and is developed by a house, decks, and steps. The deck and steps off the front of the house encroach into the setback area. Those structures were added by the tenant of a prior owner after the house was constructed. Due to the narrowness of the lot and small size of the lot, the deck and steps could not otherwise be located on the lot. These unique characteristics of this Property limit the buildable area available to the Applicants and have created an exceptional practical difficulty and unnecessary hardship for the Applicants who seek to retain a deck and steps on the lot.
 - 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 size, shape, and development and the buildable area thereof is limited due to these conditions. The Applicants seek to retain a deck and steps on the lot but are unable to do so without violating the Sussex County Zoning Code. The Board is convinced that front yard variances are

necessary to enable the reasonable use of the Property as the variances will allow the Applicants to retain the existing structures. The structures provide a reasonable access to the front of the house.

- d. The exceptional practical difficulty and unnecessary hardship were not created by the Applicants. The Applicants did not create the unusual conditions of the Property. The lot was developed by a prior owner and the Applicants did not acquire the Property until January 2021. The deck and steps were on the lot at that time and have been on the lot since at least 2015. Furthermore, the shape and conditions of the Property predate the Applicant's ownership of the lot. The preexisting conditions have resulted in a limited building envelope on the Property and the small building envelope has created the exceptional practical difficulty. The unique characteristics of the Property are clear when reviewing the survey. The Board is convinced that the exceptional practical difficulty was not created by the Applicants but was created by the lot's unique characteristics and the development thereof by a prior owner.
- 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 variances will have no effect on the character of the neighborhood. The variances will allow the Applicants to retain the existing deck and steps on the lot. The deck and steps have been on the Property for some time with no complaints noted in the record. There was no evidence that the variances would somehow alter the essential character of the neighborhood or be detrimental to the public welfare.
- 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 retain the deck and steps. The deck and steps are attached to the dwelling and cannot be relocated and are needed for reasonable access to the home. No additions or modifications to those structures are proposed.
- 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 were Dr. Kevin Carson, Mr. Jeffrey Chorman, Mr. Travis Hastings, Mr. John Williamson, and Mr. Brent Workman. No Board Member voted against the motion to approve Application.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY



John Williamson
Chair

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

Date May 3, 2021