

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: MARIE BURKMAN

(Case No. 12555)

A hearing was held after due notice on May 3, 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 rear yard setback requirement for proposed structures.

Findings of Fact

The Board found that the Applicant is requesting a variance of 10 feet from the ten (10) feet rear yard setback requirement for a proposed deck, a variance of 7.5 feet from the ten (10) feet rear yard setback requirement for a proposed deck, and a variance of 4 feet from the ten (10) feet rear yard setback requirement for proposed steps. This application pertains to certain real property located on the south side of Old Pier Lane within The Estuary Subdivision (911 Address: 33366 Old Pier Lane, Frankford) said property being identified as Sussex County Tax Map Parcel Number 1-34-19.00-610.00. After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a portion of the tax map of the area, an aerial photograph of the Property, a portion of a site plan, and photographs.
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 Kelsey Harding and James Burkman were sworn in to testify about the Application.
4. The Board found that Ms. Harding testified that the variances are needed because the Property to the rear of the house is unusable because of the grade.
5. The Board found that Ms. Harding testified that the Property is unique because it is completely cut off at the porch due to the grade.
6. The Board found that Ms. Harding testified that, due to the grade and setback, zoning allows for no use of the back of the Property.
7. The Board found that Ms. Harding testified that a deck is the least invasive construction.
8. The Board found that Ms. Harding testified that the Applicant did not cause the grading on this property.
9. The Board found that Ms. Harding testified that many of the lots in the area have patios and backyard structures.
10. The Board found that Ms. Harding testified that appropriate measures will be taken not to disrupt other lots during construction.
11. The Board found that Ms. Harding testified that there are no neighbors to the left of the lot.
12. The Board found that Ms. Harding testified that the requested size is the minimum compared to standard deck sizes.
13. The Board found that Ms. Harding testified that the grade drops down about 5 feet.
14. The Board found that Ms. Harding testified that the deck will measure 10 feet by 18 feet and will provide enough space to be used.

15. The Board found that Ms. Harding testified that the deck will comply with homeowner association standards and approval will be sought from the homeowner association.
16. The Board found that Ms. Harding testified that the deck will be level with the house and, because of the height to the rear, the deck will have a railing.
17. The Board found that Ms. Harding testified that the deck will help with drainage.
18. The Board found that Ms. Harding testified that the deck will be greater than 30 inches tall at points but differs in height due to the grade.
19. The Board found that Mr. Burkman testified that the lot was flat when purchased but, after the house was built, the grade changed to a 5 foot incline.
20. The Board found that Mr. Burkman testified that he cannot walk in his rear yard due to the incline.
21. The Board found that Mr. Burkman testified that the area is useless due to the incline.
22. The Board found that Mr. Burkman testified that there are no complaints from neighbors regarding the proposed deck.
23. The Board found that Mr. Burkman testified that there will be no maintenance required when the deck is complete.
24. The Board found that Mr. Burkman testified that the property to the rear is all in conservation and will not be improved.
25. The Board found that Mr. Burkman testified that the deck will be level with the house and will have a railing.
26. The Board found that Mr. Burkman testified that he has fallen as the grade is so steep.
27. The Board found that Mr. Burkman testified that he cannot build in the side yard due to restrictive covenants in the neighborhood.
28. The Board found that Mr. Burkman testified that the only access to the rear yard is from the porch and that the sliders from the porch are approximately 3 feet off the ground.
29. The Board found that Mr. Burkman testified that his property is the only one with this slope and that his lot has the most severe grade.
30. The Board found that three people appeared in support of and no one appeared in opposition to the Application.
31. 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 due to its size, shape, topography, development, and restrictive covenants. The Property is a shallow lot consisting of only 9,310 square feet and has been developed by a dwelling and related structures. The Property is subject to restrictive covenants which limit the development of structures in the side yard. The Applicant testified that, when he contracted to purchase the Property, the lot was flat but, after the house was complete, the grade of the rear yard sloped significantly. The grade renders the rear yard largely unusable and the Applicant has fallen due to its steep slope. In order to render the rear yard usable, the Applicant proposes to construct a deck level with the rear of the home. The Applicant cannot, however, construct this deck in compliance with the Code. The Board finds that the Property has unique conditions as aforesaid and that these conditions have created an unnecessary hardship and exceptional practical difficulty for the Applicant who seeks to construct 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 situation and the Property, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Applicant seeks to construct a deck and steps but is unable to do while complying with the Sussex County Zoning Code. The Board is thus convinced that the variances are necessary to enable the reasonable use of the Property as the variances will allow the Applicant to construct the deck and steps. The Board is convinced that the size, shape, and location of the structures are reasonable. The Board notes that the rear of the lot has a severe slope and is largely unusable. The deck will provide functional outdoor space for the Applicant.
- d. The unnecessary hardship and exceptional practical difficulty were not created by the Applicant. As discussed above, the Property has unique conditions which have limited the Applicant's ability to reasonably develop the Property. The Applicant did not create the unique conditions of the lot. The Board was convinced that the Applicant has not created the exceptional practical difficulty and unnecessary hardship. Furthermore, the Board is convinced that the Applicant did not come to the Property with an illegal use in mind. Rather, the Applicant is limited by the physical conditions of the Property and need the variances in order to reasonably use the rear portion of the lot.
- 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 proposed deck and steps will have no effect on the character of the neighborhood. The structures will be adjacent to community lands and the Applicant will have to obtain homeowner association approval in order to construct the deck and steps. There was no evidence that the deck and steps would alter the character of the neighborhood and the Board heard no substantial evidence that the variances would somehow alter the essential character of the neighborhood or be detrimental to the public welfare. The Board also notes that the Property is unique as compared to other lots in the neighborhood due to its unique slope. Consequently, based on the Applicant's un rebutted testimony, the Board doubts that other lots in the neighborhood would have similar topography issue that would otherwise limit the ability of those lot owners to reasonably use the rear of their lots. As such, the condition of the Applicant's lot appears to be an isolated concern within this neighborhood and not one to lead to similar variance requests.
- 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 Applicant has demonstrated that the variances sought will allow the Applicant to construct a reasonable deck and steps on the lot. The deck is limited in size but will provide the Applicant with usable space.
- 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 Mr. Jeffrey Chorman, Mr. Travis Hastings, and Mr. Brent Workman. Dr. Kevin Carson and Mr. John Williamson voted against the Motion to approve the variance 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 July 12, 2021