

**BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY**

**IN RE: RICHARD M. LITTLETON & ELIZABETH C. LITTLETON**

**(Case No. 12659)**

A hearing was held after due notice on February 21, 2022. The Board members present were: Dr. Kevin Carson, Mr. Jeff Chorman, Mr. John T. Hastings, Mr. Jordan Warfel, and Mr. John Williamson.

Nature of the Proceedings

This is an application for a variance from the rear yard setback requirements for a proposed structure.

Findings of Fact

The Board found that the Applicants are requesting a variance of 2 feet from the ten (10) feet rear yard setback requirement for a proposed three seasons room. This application pertains to certain real property located at the northeast side of Candleberry Drive within the Bayside Community (911 Address: 30177 Candleberry Drive, Selbyville); said property being identified as Sussex County Tax Map Parcel Number 533-19.00-1629.00 ("the Property"). 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 August 14, 2015, a letter from Bayside Homeowners Association, a drawing of the Property, a photograph, and a portion of the tax map of the area.
2. The Board found that the Office of Planning & Zoning received no letters in support of or in opposition to the Application.
3. The Board found that Richard Littleton and Elizabeth Littleton were sworn in to testify about the Application.
4. The Board found that Mr. Littleton testified that they are seeking a 2 foot variance off the rear yard property line.
5. The Board found that Mr. Littleton testified that the landing off the back door is 2 feet into the 10 feet setback. The Applicants are asking for the width of the landing as the variance for functionality purposes.
6. The Board found that Mr. Littleton testified that the Property was bought "as is" and this is the first upgrade / modification being made to the exterior of the home.
7. The Board found that Mr. Littleton testified that the properties adjacent to them are all duplex homes and 30 feet wide.
8. The Board found that Mr. Littleton testified that they own 12 feet out from the end of their home.
9. The Board found that Mr. Littleton testified that the proposed room would be 10 feet by 14 feet and would put them at the edge of the Property.
10. The Board found that Mr. Littleton testified that the 2 foot variance is a necessity in order to gain access to this proposed room.
11. The Board found that Mr. Littleton testified that the hurricane bolts surrounding the framework would prospectively weaken the overall home structure if they were to install a different door.
12. The Board found that Mr. Littleton testified that approximately sixty (60) homes in the neighborhood and well over half are estimated to have an enclosed three seasons room.
13. The Board found that Mr. Littleton testified that their homeowners association approved the proposal pending County approval and the Applicants have received consents to the sunroom from adjacent neighbors in email form.

14. The Board found that Mr. Littleton testified that the Applicants also plan in put in a paver patio at ground level.
15. The Board found that Mr. Littleton testified that the steps for the proposed room will be embedded in the foundation of the room.
16. The Board found that Mr. Littleton testified that, due to the front setback requirement, their home is more to the rear, and his neighbors are not in need of variance make this addition.
17. The Board found that Mr. Littleton testified that the elevations of each home are not the same as the others in the neighborhood.
18. The Board found that Mr. Littleton testified that they purchased the home in 2015 and have been full-time residents since 2018.
19. The Board found that Mr. Littleton testified that, if they were denied the variance, they would be left with an 8 foot wide room, which severely limits use.
20. The Board found that no one appeared in support of or in opposition to the Application.
21. 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 a nearly rectangular lot of a similar size, shape, and development of other lots in the area. The Applicants failed to convince the Board that there was some unique physical condition which has created an exceptional practical difficult or unnecessary hardship. The lot is already improved by a dwelling and the Applicants seek to build an addition that will encroach into the rear yard setback area. The Applicants did not present 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 the three seasons room within the setback area. As such, the Applicants have failed to demonstrate that there was some unique condition which has created the exceptional practical difficulty.
  - b. The Applicants failed to prove that the Property could not be developed in strict conformity with the Sussex County Zoning Code. Rather, the Property is already developed in strict conformity with the Code with a dwelling. The Applicants now seek to add onto their existing structure by adding a three seasons room. The three seasons room, however, does not fit within the building envelope and will encroach into the rear yard setback area. The Applicants argue that a three seasons room measuring 8 feet deep would not suffice for their needs but the Applicants failed to demonstrate that there was no other way to reasonably develop the lot without a variance. The Board was simply not convinced that the Applicants could not otherwise develop the Property in compliance with the Code. Perhaps the three seasons room would not be in the exact location where the Applicants want it to be located or be the size the Applicants wish but the Property appears to have a large enough building envelope for the Applicants to develop the Property in compliance with the Sussex County Zoning Code. This, of course, assumes that the three seasons room is even needed for the Applicants to reasonably use the lot. 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 a construct a three seasons room which does not fit within the building envelope. The Applicants' decision to construct this three seasons room 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 building envelope appears to otherwise be able to fit a three-seasons room, albeit a smaller one, 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 three-seasons room as proposed for purposes of convenience, profit, and / or caprice. Since the Applicants can develop the Property in compliance with 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 develop the Property in compliance with the Sussex County Zoning Code.
- e. The Board also has concerns that the approval of this request would embolden others in the neighborhood to seek similar relief.

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, Mr. Travis Hastings, Mr. Jordan Warfel, and Mr. John Williamson. No Board Member voted against the Motion to deny 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 April 18, 2022.