

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: GARY ALEXANDER

(Case No. 12683)

A hearing was held after due notice on April 18, 2022. The Board members present were: Dr. Kevin Carson, Mr. Jeff Chorman, Mr. Jordan Warfel and Mr. John Williamson.

Nature of the Proceedings

This is an application for a variance from the rear yard setback requirement for a replacement structure.

Findings of Fact

The Board found that the Applicant is requesting a variance of 2 feet from the five (5) feet rear yard setback requirement for a replacement deck. This application pertains to certain real property located on the west side of Sussex Road within the Indian River Acres Subdivision (911 Address: 30143 Sussex Road, Dagsboro) said property being identified as Sussex County Tax Map Parcel 134-7.00-34.00 ("the Property"). 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, photographs, schematics, a survey dated July 30, 2002, the application for Case No. 12666, a building permit application.
2. The Board found that the Office of Planning & Zoning received no correspondence in support of and no correspondence in opposition to the Application.
3. The Board found that Gary Alexander and Laura Alexander were sworn in to testify about the Application.
4. The Board found that Mr. Alexander testified that the Applicants need a variance to rebuild their deck after having their bulkhead replaced due to erosion. He noted the Applicants had to remove a portion of their deck for the construction of the bulkhead repair and that the Applicants were unaware they would need a variance to rebuild the deck.
5. The Board found that Mr. Alexander testified that the pool is exposed at the moment due to the lack of decking.
6. The Board found that Mr. Alexander testified that the Applicants are asking for the minimum but would like to still be able to walk around the pool.
7. The Board found that Mr. Alexander testified that the Applicants bought the Property in its current status but have had to make repairs.
8. The Board found that Mr. Alexander testified that the deck existed when they purchased the Property but it had a certificate of compliance.
9. The Board found that Mr. Alexander testified that the variance will not alter the neighborhood but will add to the character.
10. The Board found that Mr. Alexander testified that the pool is 4 feet deep and is partially in-ground. He noted that the deck is 16 inches above grade.
11. The Board found that Mr. Alexander testified that the Applicants previously received approval for a variance for a shed.
12. The Board found that Mr. Alexander testified that the bulkhead issue was a safety concern.
13. The Board found that Mr. Alexander testified that the Applicants will be expanding their deck on the north side but not in the rear yard setback. The deck will be 3-4 feet wider.

14. The Board found that Mr. Alexander testified that they are requesting the variance into the rear yard but the deck will be no closer to the rear yard than the prior deck.
15. The Board found that Mr. Alexander testified that no homeowner association approval is needed.
16. The Board found that Mr. Alexander testified that the steps to the deck will comply with the setback.
17. The Board found that Ms. Alexander testified that the requested variance is the minimum to replace what was existing.
18. The Board found that Ms. Alexander testified that there is no property to the rear of the lot as it is a lagoon.
19. The Board found that Ms. Alexander testified that the Applicants had to repair the bulkhead due to erosion of soil into the lagoon.
20. The Board found that Ms. Alexander testified that the Applicants submitted a letter from a neighbor in support of the Application.
21. The Board found that Ms. Alexander testified that they need the extra deck to place chairs and be able to walk around the pool.
22. The Board found that Ms. Alexander testified that they will be removing the flower bed adjacent to the pool and deck.
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 for the variance met the standards for granting a variance. The findings below further support the Board's decision to approve the Application for the variance.
 - a. The Property is unique as it is a lot bordering a lagoon and has suffered from erosion. The erosion required a replacement of the existing bulkhead and the replacement of that bulkhead required a removal of decking around an existing pool that has been on the Property since at least 2002. The Applicants request to replace that deck with a new one of similar size and in a similar location as the prior deck. Due to the existing development of the Property and the need to replace the structures due to the erosion of the rear property line, the Applicants were limited in where a deck could be located that would serve its intended purpose. The Board finds that the lot's unique conditions have created an unnecessary hardship and exceptional practical difficulty for the Applicants who seek to construct a replacement deck 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 and limited buildable area. The Applicants seek to construct a replacement deck but are unable to do so without violating the Sussex County Zoning Code. The Board is convinced that the variance is necessary to enable the reasonable use of the Property as the variance will allow a reasonably sized replacement deck to be constructed on the Property. The Board is convinced that the shape and location of the deck are also reasonable, which is confirmed when reviewing the survey provided by the Applicants. The deck will be used in a similar manner as a prior deck and will be located near the pool so that it is accessible.
 - d. The unnecessary hardship and exceptional practical difficulty were not created by the Applicants. As previously stated, the Property has unique conditions and these conditions have resulted in a limited building envelope on the Property. These conditions have created the unnecessary hardship

and exceptional practical difficulty. The Board notes that the existing structures were on the lot since at least 2002 and the Applicants did not acquire the Property until 2003. The erosion along the rear property line created a need to replace the bulkhead and that led to the removal of the existing deck. The Board also notes that, due to the unique conditions of the lot, there appears no other place where the deck can be located that would serve its intended purpose.

- e. The variance 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 deck will have no effect on the character of the neighborhood. The deck will be no closer to the rear property line than the prior deck. The Board notes that there was no evidence submitted into the record that the prior deck has had or that this deck will somehow alter the essential character of the neighborhood. The Board also notes that the rear of the lot is adjacent to a lagoon.
- f. The variance is the minimum variance necessary to afford relief and the variance represents the least modification possible of the regulation at issue. The Applicants have demonstrated that the variance will allow the Applicants to place the reasonably sized deck on the Property. The Board is convinced that the Applicants explored other options for the size, shape, and location of the deck but were constrained by the conditions of the lot.
- 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, Mr. Jordan Warfel, and Mr. John Williamson. No Board Member voted against the Motion to approve the variance application. Mr. Travis Hastings did not participate in the discussion or vote on this 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 June 27, 2022