

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

**IN RE: JEFFREY LITTLE & PATRICIA LITTLE**

**(Case No. 12703)**

A hearing was held after due notice on June 27, 2022. The Board members present were: Dr. Kevin Carson, Mr. Jeffrey Chorman, Mr. John T. Hastings, Mr. Jordan Warfel, and Mr. John Williamson.

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 Applicants are requesting a variance of 5 feet from the 15 feet rear yard setback requirement for proposed decks and a covered porch. This application pertains to certain real property on the east side of Sussex Road approximately 125 feet from the intersection of Kent and New Castle Roads within the Indian River Acres Subdivision (911 Address: N/A); said property being identified as Sussex County Tax Map Parcel Number 134-7.00-37.22 ("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 October 19, 2015, photographs, 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 to the Application.
3. The Board found that Jeffrey Little was sworn in to testify about the Application.
4. The Board found that Mr. Little testified that he has a very small lot and that, in order to build a home and accommodate the holding tank, he needs a variance.
5. The Board found that Mr. Little testified that he would like to place his back deck 10 feet closer to the rear property line and that, if approved, his structure will be the same distance as both neighbors adjacent to him from the bulkhead.
6. The Board found that Mr. Little testified that he is doing the best he can with the size of the lot.
7. The Board found that Mr. Little testified that the Property is unique due to having a bulkhead. He noted that the property line ends at the bulkhead.
8. The Board found that Mr. Little testified that he has to have a holding tank as the sewer is not coming for 3-5 years. He noted that the holding tank will be placed on the left side of the Property which will have the wider setback.
9. The Board found that Mr. Little testified that, if he changes the placement of the home, he will be losing more yard area.
10. The Board found that Mr. Little testified that he is concerned about parking because his driveway is less than 30 feet and he owns a 3/4 ton truck that will be hard to fit in the driveway.
11. The Board found that Mr. Little testified that the variances will not affect the character of the neighborhood as all the houses in the neighborhood are within 10 feet of the bulkhead.
12. The Board found that Mr. Little testified that the lot is currently vacant and that he has a blank slate. He admitted that it may have been his mistake to purchase a small lot.
13. The Board found that Mr. Little testified that the proposed home is not an overly large home but he is restricted by the area of the lot. He noted that the proposed, two-story home, including the deck, is 59 feet deep but he does not know the square



footage. He noted that the deck will be 10 feet deep and that there will be a screened in porch.

14. The Board found that Mr. Little testified that there is no homeowners association
15. The Board found that Mr. Little testified that the foundation of the home will be a concrete footer, formed in place.
16. The Board found that Mr. Little testified that there will be a two (2) car garage.
17. The Board found that Mr. Little testified that, without the variance, he would be left with a 5 feet screened porch which is too small.
18. The Board found that Mr. Little testified that, if he flips the orientation of the home, he would fill the building envelope but it would not leave him any space to park a pontoon boat or a place for the holding tank. He noted that he purchased the Property to build a home and park his pontoon boat and that he needs the extra space at the southside of the Property to do that.
19. The Board found that Mr. Little testified that the only external steps will be off the front door.
20. The Board found that Mr. Little testified that the porch will be on the first floor with a separate porch on the second floor.
21. The Board found that Mr. Little testified that the house design was chosen by his wife.
22. The Board found that Mr. Little testified that the rear of the Property would be in line with the neighbors. He stated that he believes that the rest of his block has obtained variances prior to 2011.
23. The Board found that Mr. Little testified that he knows that the houses on his block are all less than 15 feet from the bulkhead but he is unaware of how they got to be that way.
24. The Board found that Mr. Little testified that he believes the front of the home will also be in line with the neighbors but his primary concern was having his vehicle off of the street.
25. The Board found that Mr. Little testified that there is no off-street parking in the neighborhood.
26. The Board found that Mr. Little testified that his property line goes from the road to the bulkhead.
27. The Board found that no one appeared in support of or in opposition to the Application.
28. 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 Applicant failed to demonstrate that the Property was unique and that the uniqueness of the Property has created an exceptional practical difficulty. The lot measures 75 feet wide by approximately 100 feet deep and is rectangularly shaped and shows no unusual shape. The lot also benefits from reduced setback requirements under the small lot ordinance. These provisions greatly enhance the size of the building envelope for the Property. The Property is currently vacant and the Applicants have a "blank slate" upon which to design their new home. Rather than design a home in compliance with the Code, the Applicants have designed a home that requires variances into the rear yard setback area. The Applicants did not present substantial evidence of unique topography or other conditions which would effectively limit their ability to develop the Property and which created an exceptional practical difficulty. While the Property will need a holding tank, the Applicants failed to show that the location of the holding tank so restricts the developability of the Property that a variance is needed. Rather, the difficulty is clearly the result of the Applicants' intention to



construct a deck and porch within the setback area. The apparent reason for this request is that the Applicants want to use other portions of the lot for a large truck and pontoon boat and has nothing to do with the conditions of the lot. Quite simply, there appears to be room to place a home on the lot; albeit, perhaps, not of the Applicants' preferred design or in the Applicants' preferred location. 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. The Property is a rectangularly shaped lot which benefits from the small lot ordinance and is currently vacant. The Property is effectively a "blank slate" as admitted by the Applicant. Rather than comply with the Code, the Applicants propose these variances so that they can construct structures outside the building envelope. It is clear that the Applicants have chosen not to build in strict conformity with the Code rather than developing the lot to comply with the Code's setback requirements. While the location of the deck and porch, may not be the location the Applicants prefer, the Applicants failed to demonstrate that they could not otherwise comply with the Code's setback requirements. The Applicants are not entitled to have a porch and deck in this location. Moreover, the Board notes that large portions of the side yard within the building envelope will not be used for the dwelling. The Applicants have, thus, elected not to use portions of the building envelope for a dwelling and related structures and instead propose to use those areas for other reasons. The Board was simply not convinced that the Applicants could not otherwise develop the Property in compliance with the Code. For these reasons, the Board finds that the Property could be developed in strict conformity with the Code and that the variances are 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 construct a deck and porch which do not fit within the building envelope. The Applicants' decision to construct these structures 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 structures that would provide for the reasonable use of the lot, albeit perhaps in a location and design which differ from the Applicants' preference, 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 deck and steps 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 variances are not necessary to enable the reasonable use of the Property, the Board also finds that the variances requested are not the minimum variances necessary to afford relief. Rather, 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 a motion to approve the variance application, which was duly made and seconded, the variance application was denied. The Board Members in favor of the Motion to approve the variances were Dr. Kevin Carson and Mr. Travis Hastings. Mr. Jeffrey Chorman, Mr. Jordan Warfel, and Mr. John Williamson voted against the Motion to approve the variance application. Pursuant to Board of Adjustment Rule of Procedure 6.5, three affirmative votes are needed to approve a variance. Since the Applicant failed to convince three Board members that the variance should be approved, the motion to approve the application failed and the variance application was denied. The reasons outlined above explain the reasons for the denial and these findings of fact affirm the Board's decision to deny the Application.

BOARD OF ADJUSTMENT  
OF SUSSEX COUNTY



Jeffrey Chorman  
Chair

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

Date August 15, 2022.