

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: FRANK PROCTOR

(Case No. 11909)

A hearing was held after due notice on March 6, 2017. The Board members present were: Mr. Dale Callaway, Mr. John Mills, Mr. Jeff Hudson, Mr. Norman Rickard, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for a variance from the separation requirement between units.

Findings of Fact

The Board found that the Applicant is seeking a variance of 10.5 feet from the forty (40) feet separation distance requirement for a proposed deck. This application pertains to certain real property located the north side of Ocean Vista Drive in the Bayville Shores development (911 Address: 38331 Ocean Vista Drive, Unit 1156, Selbyville); said property being identified as Sussex County Tax Map Parcel 5-33-13.00-2.00.

1. The Board was given copies of the Application, a portion of the tax map of the area, aerial photographs of the Property, and a survey dated November 22, 2016.
2. The Board found that the Office of Planning & Zoning received no correspondence in support of the Application and one (1) letter in opposition to the Application.
3. The Board found that George Elliot and Ron Vendemia were sworn in to testify about the Application and submitted a photograph to the Board.
4. The Board found that Mr. Vendemia testified that he and Mr. Elliot are present to represent the Applicant. Coastal Services, LLC, is the company building the proposed deck and Mr. Elliot is the owner of the company. Mr. Vendemia is the project manager.
5. The Board found that Mr. Vendemia testified that the variance is needed to construct a deck on Unit 1156.
6. The Board found that Mr. Vendemia testified that the deck is required to be 40 feet from the next building.
7. The Board found that Mr. Vendemia testified that the proposed deck will be wrapped around an end unit to keep it consistent with the rest of the development.
8. The Board found that Mr. Vendemia testified that most decks measure 12 feet by 17 feet and the proposed addition to the deck will measure 4 feet by 24 feet. End units are allowed to have wrap around decks measuring 4 feet wide.
9. The Board found that Mr. Vendemia testified that the deck on the neighboring unit encroaches into the separation distance requirement and, if the owner of the neighboring unit had not built its deck, there would be no encroachment issue.
10. The Board found that Mr. Vendemia testified that the road curves in front of the unit and causes the buildings to be located closer together than other buildings in the neighborhood.
11. The Board found that Mr. Vendemia testified that no other buildings in the neighborhood are as close to each other as these two buildings and all other buildings are uniform in separation distance.
12. The Board found that Mr. Vendemia testified that the existing deck on the Property has been there for some time and the Applicant seeks to expand that deck to the east.
13. The Board found that Mr. Vendemia testified that he did not construct the deck or the deck on the neighboring building.

14. The Board found that Janet Duber was sworn in and testified in support of the Application.
15. The Board found that Ms. Duber testified that she is the acting President of the Board of Directors of Bayville Shores.
16. The Board found that Ms. Duber testified that the original developer added some decks as part of the original buildings. The developer added decks to the second floors of buildings.
17. The Board found that Ms. Duber testified that the developer placed the current deck on the Property.
18. The Board found that Ms. Duber testified that these two buildings were placed at an odd angle.
19. The Board found that Ms. Duber testified that she was unaware that the neighboring deck was in violation of the setback requirements because the previous builder stated that all approvals had been received.
20. The Board found that Ms. Duber testified that the community has allowed for wrap-around decks such as the one proposed by the Applicant and the homeowners association adopted a policy allowing decks on all units.
21. The Board found that Ms. Duber testified that, after the developer left, homeowners debated whether to allow for individual decks but, ultimately, there was very little opposition to the policy allowing for the individual decks.
22. The Board found that Ms. Duber testified that the buildings are situated in such a fashion that views will not be obstructed because the units within the building are offset so as to preserve views.
23. The Board found that Ms. Duber testified that the association has a rigid architectural review process but has approved approximately 65 decks since 2014.
24. The Board found that Ms. Duber testified that, on February 4, 2017, the Board of Directors approved the Applicant's proposed deck.
25. The Board found that Ms. Duber testified that she is unaware of any decks in the community which are in the same situation as the Applicant.
26. The Board found that Ms. Duber testified that the contractor who built the deck on the neighboring unit is believed to have outstanding permits on file with Sussex County.
27. The Board found that Mr. Elliot testified that the Property is narrow and has a unique angle.
28. The Board found that Mr. Elliot testified that the Applicant is trying to keep the deck uniform and the current architectural standards in the community would not allow the builder to deviate from the proposed deck.
29. The Board found that Mr. Elliot testified that no views will be obstructed by the proposed deck and the deck will not affect neighboring properties.
30. The Board found that Mr. Elliot testified that the deck conforms with all other decks built on end units throughout the development.
31. The Board found that Mr. Elliot testified that the variance would allow the builders the maximum space between buildings for the proposed deck.
32. The Board found that two (2) parties appeared in support of the Application.
33. The Board found that no parties appeared in opposition to the Application.
34. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, 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 a condominium unit located at the end of a condominium building. The adjacent building to the east is located at a severe angle to the Applicant's building. This angle is clear from reviewing the survey and the tax map. The severe angle appears to be the result of a sharp curve in the adjacent road. As a result of the angle, the rear of the units for the

adjacent building are nearly perpendicular to the Applicant's unit. The clearly unique angling of these buildings has created an exceptional practical difficulty for the Applicant who seeks to construct a reasonable expansion of his deck to create a wrap-around deck similar to other end units in the neighborhood. Due to the unique angling of the condominium buildings, the Applicant cannot build this expansion in compliance with the Sussex County Zoning Code. The Board notes that the tax map, aerial photographs, and testimony of the condominium association's acting president confirm that this situation is quite unusual and is not the normal situation in the neighborhood. The Board also notes that, even if the Applicant did not build a wrap-around deck, the unit in the neighboring building would need a variance for its own wrap-around deck as that deck appears to encroach into the separation distance requirement. The Applicant had no control over the placement or construction of his neighbor's deck or unit.

- b. Due to the uniqueness of the Property and the placement of the deck on a neighboring lot, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Applicant proposes to construct a reasonably sized expansion to his deck which would be consistent with other decks on end units in the neighborhood but the Applicant is unable to do so without violating the separation distance requirements between buildings. The variance is thus necessary to enable reasonable use of the Property. The Board is convinced that the shape and location of the deck are also reasonable (which is confirmed when reviewing the survey). The Board also notes that the community's architectural review standards limit the design options for a wrap-around deck. The proposed deck is uniform with the community standard.
- c. The exceptional practical difficulty was not created by the Applicant. The Applicant did not develop the condominium and place the buildings so close together at this odd angle. Rather, the condominium was created by the original developer. The severe and unusual angle of the placement of the condominium buildings has created an exceptional practical difficulty for the Applicant. The Applicant also did not place the deck on the neighboring building to the east so close to his unit. The unique conditions of the Property and the development of the adjacent building have created an exceptional practical difficulty for the Applicant who seeks to reasonably expand his deck to be consistent with other decks in the neighborhood.
- d. 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 not have a negative impact on the neighborhood. The un rebutted testimony confirms that there are other similar wrap-around decks in the neighborhood and the proposed deck is consistent with those decks. Meanwhile, the deck on the neighboring building already encroaches into the setback area yet no complaints were noted in the record about its location. The Board notes that a letter of opposition was submitted into the record and the Board has considered those concerns but is not convinced that the variance for this application will somehow alter the essential character of the neighborhood or be detrimental to the public welfare. The Board finds that decks are prevalent throughout the neighborhood. Some decks were constructed with the original units and others were constructed thereafter. Importantly, the evidence is clear that many end units in the neighborhood have wrap-around decks which are similar to the one proposed by the Applicant. The

Board also notes that the homeowners association has approved the wrap-around deck. Presumably, if the deck were to somehow fail to conform with the character of the neighborhood, the association would have denied the Application. Rather, the deck appears to be consistent with the prevalent use of decks (and wrap-around decks for end units) in the neighborhood. Due to the unusual angle of the buildings in this case, the Board is also not convinced that the granting of this variance would create a precedent for the other buildings in the neighborhood.


- e. The variance sought is the minimum variance necessary to afford relief and the variances requested represents the least modification possible of the regulation at issue. The Applicant has demonstrated that the variance sought will allow the Applicant to construct a reasonably sized expansion to the existing deck on the Property and the expanded deck will be consistent with other wrap-around decks found elsewhere in the community and the community standards.

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 Mr. Dale Callaway, Mr. Jeff Hudson, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman. No Board Members voted against the Motion to approve the variance application.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY


Dale Callaway
Chairman

If the use is not established within one (1) year from the date below the application becomes void.

Date April 4, 2017.