

**BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY**  
**IN RE: STERLING CROSSING CONDOMINIUM ASSOCIATION, INC.**  
**(Case No. 11969)**

A hearing was held after due notice on June 19, 2017. The Board members present were: Mr. Dale Callaway, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for a community-wide variance from the separation requirement between buildings.

Findings of Fact

The Board found that the Applicant is requesting a community wide variance from the separation requirement between units to reduce the separation requirement from 40 feet to 20 feet. This application pertains to certain real property located at Old Landing Road (Route 274) approximately 374 feet southwest of Airport Road (911 Address: Cobalt Way, Rehoboth Beach); said property being identified as Sussex County Tax Map Parcel 3-34-12.00-123.02.

1. The Board was given copies of the Application, a portion of the tax map of the area, aerial photographs of the Property, a recorded site plan for the development, and an aerial overlay of the Property.
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 Dr. Curtis Whitehair was sworn in to testify about the Application. David Hutt, Esquire, presented the case on behalf of the Applicant and submitted exhibits for the Board to review including Google Earth images, a plot showing proposed additions, photographs, an email from the State Fire Marshal, a letter from the Dr. Whitehair, the community's proposed guidelines for decks and screened decks / patios, and a portion of the Sussex County Zoning Code.
4. The Board found that Mr. Hutt stated that Sterling Crossing is a condominium association located along Old Landing Road. The final site plan was approved for 140 units and recorded in 2006 but not all of the units have been built. The surrounding area consists of properties in multiple zoning districts.
5. The Board found that Mr. Hutt stated that the Sussex County Zoning Code requires a separation distance of 40 feet between buildings in a condominium and that a community wide variance is being sought to apply to all units as unit owners may want to add decks or three season rooms to their units. The goal is to reduce the number of variance requests.
6. The Board found that Mr. Hutt stated that the homeowners association has received a large amount of applications to make additions to units and a community wide variance would allow for a more uniform approach to additions in the community.
7. The Board found that Mr. Hutt stated that, rather than the Board of Adjustment receiving variance applications, all applications requesting additions will go to the homeowners association.
8. The Board found that Mr. Hutt stated that there are existing decks in the community.
9. The Board found that Mr. Hutt stated that fire safety has been considered and the State Fire Marshal has no objection to the variance request. Fire hydrants are located throughout the community.
10. The Board found that Dr. Whitehair, under oath, affirmed the statements made by Mr. Hutt.

11. The Board found that Dr. Whitehair testified that the homeowners association's architectural review board has reviewed the proposed request and the community has vetted the proposal.
12. The Board found that Dr. Whitehair testified that the proposed patios and three seasons rooms would match the front porch.
13. The Board found that Dr. Whitehair testified that there are 24 units left to be constructed and the community is transitioning from builder-control to owner-control. The Applicant is looking to maintain and improve the community.
14. The Board found that Dr. Whitehair testified that screen porches will reduce the risk of mosquito-borne diseases.
15. The Board found that Dr. Whitehair testified that some units are three steps above grade which limits the ability of some residents from using outdoor patio space. The aging population will not be able to use steps down to patios.
16. The Board found that Mr. Hutt stated that some units are not suited for ground level patios.
17. The Board found that Mr. Hutt stated that the Property is unique because it is used as a condominium / townhouse community with varying separation distances between buildings. Each building has its own unique footprint.
18. The Board found that Mr. Hutt stated that the Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code while providing uniformity in the community.
19. The Board found that Mr. Hutt stated that the variance is necessary to avoid multiple variance requests filed by units.
20. The Board found that Mr. Hutt stated that the exceptional practical difficulty was not created by the Applicant.
21. The Board found that Mr. Hutt stated that the variance will not alter the essential character of the neighborhood because variance will provide for a more uniform appearance in the neighborhood.
22. The Board found that Mr. Hutt stated that a 20 feet separation distance is the minimum variance that will afford relief.
23. The Board found that Dr. Whitehair testified that the homeowners can build a deck, porch, or patio and the homeowners association allows a 20 feet separation requirement. The homeowners association, however, prohibits two-story additions.
24. The Board found that Mr. Hutt stated that the condominium falls under the Unit Property Act and that all additions would be within the limited common elements for each individual unit within the condominium.
25. The Board found that thirteen (13) parties appeared in support of the Application.
26. The Board found that no parties appeared in opposition to the Application.
27. 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 used as a condominium for 140 units and the buildings were placed in such a fashion that some of the units are separated by more than 40 feet and additions could be made while other units are closer to each other and additions could not be made. The condominium is transferring from builder control to owner control and the owners seek to have uniformity within the community. The current design of the community would effectively create a race to build additions and result in some units having additions while others could not. This situation is unique and likely stems from the unique development of the Property. The Board notes that the Property as an odd shape and multiple storm water management ponds as

shown on the site plan. The unique development of the Property has created an exceptional practical difficulty for the Applicant.

- b. Due to the uniqueness of the Property, the Property cannot be developed uniformly in strict conformity with the Sussex County Zoning Code. The Applicant proposes to establish a consistent separation distance requirement between all units in the condominium thereby allowing all unit owners to construct reasonably sized first floor additions. Under the current scheme, only some units could construct additions and it would create a race to see who could construct their additions first. The Board finds that the additions, as proposed, are reasonable and the variance is necessary to afford reasonable use of the Property because the variance will give each unit owner an opportunity to construct an addition. The proposed additions will provide unit owners with safe access to the exterior of the units. The community has standards which will keep the additions consistent in appearance and use.
- c. The exceptional practical difficulty was not created by the Applicant. The Applicant is a condominium association which controls the community and the Applicant did not develop the condominium and place the buildings so close together. The unique conditions of the Property and the uniqueness of this development have created an exceptional practical difficulty for the Applicant who seeks to establish reasonable separation distance standards throughout the community.
- 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 variance will not have a negative impact on the neighborhood. The unrebutted testimony confirms that there are similar additions already in the neighborhood and the community approves of the reduced separation distance requirement to allow all units to have similar additions. The variance proposal has been vetted by the community and no evidence was submitted which demonstrated that the variance for this application will somehow alter the essential character of the neighborhood or be detrimental to the public welfare. Rather, the Application appeared to receive overwhelming support for its approval. The Board also notes that the Fire Marshal has reviewed the plan and does not object to the request.
- e. The variance sought is the minimum variance necessary to afford relief and the variance requested represents the least modification possible of the regulation at issue. The Applicant has demonstrated that the variance sought will allow the individual unit owners to construct additions in a uniform manner rather than only allowing certain unit owners to build additions as is the case now.

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. John Mills, Mr. Norman Rickard, and Mr. Brent Workman. No Board Members voted against the Motion to approve the variance application. Ms. Ellen Magee did not participate in the discussion or vote on this 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 August 22, 2017.