

**BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY
IN RE: JEFFERY MARTINI & JACQUELINE MARTINI**

(Case No. 11973)

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

Nature of the Proceedings

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

Findings of Fact

The Board found that the Applicants are seeking a variance of 9 feet from the ten (10) feet rear yard setback requirement for a proposed deck addition. This application pertains to certain real property located on the south side of Canal Street approximately 600 feet west of Erie Avenue (911 Address: 38335 Canal Street, Ocean View); said property being identified as Sussex County Tax Map Parcel Number 1-34-13.00-1175.00-73.

1. The Board was given copies of the Application, a portion of the tax map of the area, an aerial photograph of the Property, a survey of the Property dated March 10, 2017, a survey of the Property dated June 15, 2011, and pictures 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 Chad Carter, Jeff Martini, and Jacqueline Martini were sworn in to testify about the Application.
4. The Board found that Mr. Carter, who is the Applicants' surveyor, testified that the State of Delaware owns the parcel in the rear and uses the parcel for maintenance of the nearby canal. Large equipment is used by the Army Corps of Engineers to access the canal.
5. The Board found that Mr. Carter testified that the Property is irregularly shaped and the existing deck was cut off at a 45 degree angle due to the irregularity of the Property.
6. The Board found that Mr. Carter testified that the deck suffers from airflow circulation problems and does not match the other decks in the area.
7. The Board found that Mr. Carter testified that the neighboring properties extend to the centerline of the lagoon and do not have these setback issues.
8. The Board found that Mr. Carter testified that the neighboring properties have decks which are similar to the proposed deck.
9. The Board found that Mr. Carter testified that the existing dock extends past the Property where the location of the deck is being proposed.
10. The Board found that Mr. Carter testified that the variance will not alter the essential character of the neighborhood and the variance requested is the minimum variance necessary to afford relief.
11. The Board found that Mr. Martini testified that he proposes to square off the deck. The existing deck has an odd angle and the odd angle of the deck effects the space available to use on the deck as well as the access to and from the deck.
12. The Board found that Mr. Martini testified that there is no neighbor on the east side of the Property.
13. The Board found that Mr. Martini testified that the oddly shaped deck would affect property values in the area.
14. The Board found that Mr. Martini testified that the Army Corps of Engineers controls the maintenance line which runs parallel to the canal. A portion of the house also had to be cut off to accommodate the Army Corps of Engineers.

15. The Board found that Mr. Martini testified that, at first, they were unaware of the issues with the deck. They were unaware of the unique angle of the Property when they entered into a contract to purchase the Property.
16. The Board found that Mr. Martini testified that the canal has been recently dredged.
17. The Board found that Mr. Martini testified that the deck is different from other decks in the neighborhood. The Applicants' dwelling is one of the first to exist in the neighborhood and that they have a different use of their deck compared to others in the neighborhood.
18. The Board found that Mr. Carter testified that the proposed deck will not impact the maintenance parcel.
19. The Board found that Mr. Martini testified that the angle of the deck effects the use of the deck as it cuts off a significant amount of space.
20. The Board found that Mr. Martini testified that the proposed deck will only be on the first floor.
21. The Board found that Mr. Martini testified that there are no other lots shaped like this in the neighborhood.
22. The Board found that Mr. Carter testified that the difficulty was created by the builder, Schell Brothers, or the engineers.
23. The Board found that Doug Purcell and Graham Lake were sworn in to testify in support of the Application.
24. The Board found that Mr. Purcell testified that the homeowners association unanimously supports the proposed deck addition.
25. The Board found that Mr. Purcell testified that there are a total of 87 lots in the community. 52 units have been built and all of the units and all of the proposed units except for the Applicants' unit have square decks.
26. The Board found that Mr. Lake testified that he is the Applicants' neighbor.
27. The Board found that Mr. Lake testified that the Property is an awkwardly shaped property.
28. The Board found that Mr. Lake testified that the Applicants' deck is less than half the size of the other decks in the neighborhood.
29. The Board found that two (2) parties appeared in support of the Application.
30. The Board found that no parties appeared in opposition to the Application.
31. 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 unrebutted, 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 clearly has a unique shape as is shown on the survey. The rear of the Property has a unique angle which is different from the shapes of other lots in the neighborhood. Nearby lots are generally rectangular in shape. The Property is adjacent to maintenance parcel used by the State of Delaware and the Army Corps of Engineers to dredge the nearby canal. This maintenance parcel cuts off a significant portion of the rear yard. While the home was developed in a similar fashion to other homes in the neighborhood, the northeast corner of the rear deck was built at an odd angle that renders the deck difficult to use. The Board is convinced that an exceptional practical difficulty exists and that the difficulty is the result of the unique physical conditions of the Property.
 - b. 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 building envelope due to its odd shape – particularly the shape of the rear property line. The Applicants seek to construct an addition to the deck of a reasonable size but are unable to do so without violating the Sussex County Zoning Code. The deck would be similar to other decks in

the neighborhood and would provide adequate space for the Applicants to use and access the deck. Upon review of the pictures of the current deck, it is clear that the existing deck is small and difficult to use. The variance is thus necessary to enable reasonable use of the Property as the variance will allow a reasonably sized addition to the deck to be constructed on the Property. The Board is convinced that the shape and location of this addition are reasonable, which is confirmed when reviewing the survey provided by the Applicants.

- c. The exceptional practical difficulty was not created by the Applicants. The Applicants did not create the unique size and shape of the lot which has resulted in a limited building envelope on the Property. The unique characteristics of the Property are clear from the record and the survey. The Board is convinced that the exceptional practical difficulty was not created by the Applicants but was created by the lot's unique characteristics.
- 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 addition to the deck will have no effect on the character of the neighborhood. The deck will be located in the rear of the Property adjacent to common area and the deck will be similar to other decks in the neighborhood. The testimony of two (2) neighbors also confirms that the deck addition will improve the Property and will bring the deck into conformity with other decks in the neighborhood. No evidence was presented which would indicate that the variance would somehow alter the essential character of the neighborhood or be detrimental to the public welfare.
- 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 Applicants have demonstrated that the variance sought will allow the Applicants to construct a reasonably sized addition to the deck on the Property which can be reasonably used by the Applicants. The deck will be similar to the size of other decks on nearby properties.

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, Ms. Ellen Magee, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman. No Board Member 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 August 22, 2017.