

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: JOHN PALITA

(Case No. 12273)

A hearing was held after due notice on March 18, 2019. The Board members present were: Mr. Dale Callaway, Ms. Ellen Magee, Mr. John Mills, Mr. John Williamson, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for variances from the side yard setback requirement for existing structures.

Findings of Fact

The Board found that the Applicant is seeking a variance of 4.1 feet from the five (5) feet side yard setback requirement on the south side for an existing deck, a variance of 3.8 feet from the five (5) feet side yard setback requirement on the south side for an existing deck, a variance of 0.7 feet from the five (5) feet side yard setback requirement on the north side for an existing landing, and a variance of 0.8 feet from the five (5) feet side yard setback requirement on the north side for an existing landing. This application pertains to certain real property located on the east side of Bethany Drive, approximately 830 feet south of Double Bridges Road (911 Address: 34717 Bethany Drive, Frankford) said property being identified as Sussex County Tax Map Parcel Number 1-34-19.00-336.00.

1. The Board was given copies of the Application, a survey of the Property dated July 20, 2018, a building permit application, an aerial photograph of the Property, 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 and one letter in opposition to the Application.
3. The Board found that John Palita was sworn in to testify about the Application.
4. The Board found that Mr. Palita testified that the Property is unique as it is a small lot consisting of only 6,000 square feet. The Property is also long and narrow.
5. The Board found that Mr. Palita testified that the uniqueness of the lot makes it difficult to build within the setback.
6. The Board found that Mr. Palita testified that, originally, the plan was to put the deck on the front of the house but that would affect his neighbor's ability to gain access to its property. The neighbor on Lot 43 is restricted due to the location of a telephone pole and water.
7. The Board found that Mr. Palita testified that the deck cannot be placed on the rear of the dwelling as it all swamp and standing water.
8. The Board found that Mr. Palita testified that the house is elevated and the landing is 10 feet tall.
9. The Board found that Mr. Palita testified that the landing needed to be wider to provide safe access to the home.
10. The Board found that Mr. Palita testified that he did not create the exceptional practical difficult as he did not create the lot.
11. The Board found that Mr. Palita testified that he worked with a builder but the builder went to jail for fraud. The builder told him that the deck could be built to the property line provided it did not have a roof. The deck was built 1 foot from the property line.
12. The Board found that Mr. Palita testified that other houses in the neighborhood have decks.
13. The Board found that Mr. Palita testified that the deck is wide enough to allow for seating at a picnic table. The neighbor requested that the deck be at least 3 feet from

the property line but Mr. Palita said that the footers would have to be moved at great expense and that a deck that small would be difficult to reasonably use.

14. The Board found that Mr. Palita testified that the variances will not alter the essential character of the neighborhood as there are decks on neighboring properties.
15. The Board found that Mr. Palita testified that the variances are the minimum requested to allow reasonable use of the deck.
16. The Board found that no parties appeared in support of or in opposition to the Application.
17. 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 met the standards for granting a variance. The findings below further support the Board's decision to approve the Application.
 - a. The Property is unique as it is a small and narrow lot. The lot is only 50 feet wide and consists of only 6,000 square feet. The Property is also unique because it is located in a flood zone and the rear of the lot is unbuildable due to the standing water. As such, the building envelope is exceptionally limited. The situation is also unique because the neighbor on Lot 43 has limited access to Bethany Drive and a deck built in front of the house would potentially make access to Lot 43 challenging. These unique physical conditions have created an exceptional practical difficulty for the Applicant who seeks to retain a deck and landing on the Property.
 - b. Due to the uniqueness of the Property, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Applicant seeks to retain a deck and landing but is unable to do so without violating the Sussex County Zoning Code. The Board is convinced that the variances are necessary to enable the reasonable use of the Property as the variances will allow a reasonably sized deck and landing to remain on the Property. The Board is convinced that the shape and location of the deck and landing are also reasonable, which is confirmed when reviewing the survey provided by the Applicant. The location of the landing provides the Applicant with reasonable access to the home and the deck provides reasonable outdoor living space.
 - c. The exceptional practical difficulty was not created by the Applicant. There was no evidence that the Applicant created the unique size of the Property or that the Applicant created the standing water problem to the rear of the lot. These unique conditions have created an unusually limited building envelope which is further limited by the placement of the existing house. These conditions have created the exceptional practical difficulty for the Applicant who seeks to retain a deck and landing on the lot. The Board notes that the Applicant also relied on advice from a builder and learned of the error after construction had been substantially underway.
 - d. The variances 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 structures will have no effect on the character of the neighborhood. The un rebutted evidence confirms that there are other decks and landings in the neighborhood. The landing encroaches into the setback area by less than 1 foot. Meanwhile, the deck was placed in the side yard, rather than the front yard, so as to better accommodate the neighbor to Lot 43 who has very limited access to Bethany Drive. The challenges for access to Lot 43 are clear from the aerial photograph and, by having the deck in the side yard, rather than the rear yard, should provide Lot 43 with clearer and safer access than if the deck were placed in the front

yard. The Board was convinced that the variances would not somehow alter the essential character of the neighborhood or be detrimental to the public welfare.

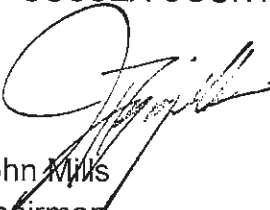
- e. The variances sought are the minimum variances necessary to afford relief and the variances requested represent the least modifications possible of the regulation at issue. The Applicant have demonstrated that the variances sought will allow the Applicant to retain a reasonably sized deck and landing on the Property. These structures are small enough to be reasonably used and meet their purpose. No additions to these structures are proposed.

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. John Williamson, and Mr. Brent Workman. No Board Member voted against the Motion to approve the variance application.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY


John Mills
Chairman

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

Date April 16, 2019.