

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: KATHY LICCIARDELLO

(Case No. 12406)

A hearing was held after due notice on January 27, 2020. The Board members present were: Dr. Kevin Carson, Mr. Jeff Chorman, Ms. Ellen Magee, Mr. John Williamson, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for a variance from the distance between buildings requirements for proposed structures.

Findings of Fact

The Board found that the Applicant is seeking a variance of fifteen (15) feet from the forty (40) feet separation distance requirement between multi-family dwellings for a proposed deck. This application pertains to certain real property located on the east side of White Cap Lane approximately 210 feet northwest of Shady Road in the Somerset Green Development (911 Address: 33120 Whitecap Lane, Lewes); said property being identified as Sussex County Tax Map Parcel Number 3-34-6.00-687.00. 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 drawing of the site, drawings of the location of the proposed deck, 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 Kathy Licciardello, Mauro Licciardello, Dalton Messick, and Courtney Messick were sworn in to give testimony about the Application and they submitted exhibits for the record.
4. The Board found that Mr. Courtney Messick testified that he is the Applicant's builder hired to build a deck. He noted that the separation between the two buildings is 40 feet and that the proposed deck will project 12 feet but the request is for a 15 foot variance.
5. The Board found that Mr. Courtney Messick testified that neighboring properties have fences and patios.
6. The Board found that Mr. Dalton Messick testified that neighboring properties have 6 foot tall fences and paver patios.
7. The Board found that Mr. Dalton Messick testified that the variance is necessary because the sides are very narrow and that the houses are close together. According to Mr. Messick, the developer placed these units close together.
8. The Board found that Mr. Dalton Messick testified that the exceptional practical difficulty was not created by the Applicant.
9. The Board found that Mr. Dalton Messick testified that the variance will not alter the central character of the neighborhood because most houses have privacy fences and at least one paver patio.
10. The Board found that Mr. Dalton Messick testified that the deck will not impair the neighbor's use of their yard because the fences on one side and the road on the other side.
11. The Board found that Mr. Dalton Messick testified that the variance requested is the minimum variance to afford relief.
12. The Board found that Mr. Courtney Messick testified that there are other fences on this block and that the privacy fence will remain.

13. The Board found that Mr. Courtney Messick testified that the deck will be open with steps to the side and that there are no drainage concerns with the deck.
14. The Board found that Mr. Courtney Messick testified that paver patios on neighboring properties are located at ground level.
15. The Board found that Mr. Licciardello testified that they have not yet obtained homeowner association approval and that the homeowners association owns the adjacent swale.
16. The Board found that Mr. Licciardello testified that the lot goes 15 feet from the house.
17. The Board found that Mr. Licciardello testified that it is a better deal for a deck than pavers.
18. The Board found that Mr. Licciardello testified that he is not worried that this will lead to others building.
19. The Board found that Dennis Thompson and Paul Rieger were sworn in to give testimony in opposition to the Application. Mr. Thompson submitted exhibits to the Board.
20. The Board found that Mr. Thompson testified that he owns the property at 33118 White Cap Lane directly adjacent to the lot and that he is in on the executive board of the homeowners association and on the architectural review board.
21. The Board found that Mr. Thompson testified the Applicant has submitted a request to put a deck in the back yard.
22. The Board found that Mr. Thompson testified the community is a condominium with limited common elements. The rear of the property behind the Applicant's unit is considered limited common elements and the deck would be located in that area. The area behind the limited common elements is considered common elements owned by the association and holds a drainage swale.
23. The Board found that Mr. Thompson testified the proposed deck could cause potential damage to that swale and cause the runoff to be impaired.
24. The Board found that Mr. Thompson testified all homeowners have a similar amount of space and paver patio could be installed.
25. The Board found that Mr. Thompson testified a paver patio is located off a unit on the same block and is at ground level and the slope towards the swale starts 2 feet after the paver ends. He noted that the neighbor who installed pavers took steps to address runoff concerns.
26. The Board found that Mr. Thompson testified the deck will affect the integrity of the swale.
27. The Board found that Mr. Thompson testified he does not see why the Applicant needs a variance of 15 feet because the Applicant has only 12 feet of limited common elements. He noted that Lot 42 came out 7 feet for the paver patio.
28. The Board found that Mr. Courtney Messick testified that the deck will project out 12 feet and will be supported by girders. He stated that a variance of 12 feet is needed.
29. The Board found that no one appeared in support of and two people appeared in opposition to the Application.
30. 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 is unique and that a unique condition of the Property has created the exceptional practical difficulty. The Board notes that the Property is part of a townhouse condominium community where the Applicant owns a unit with limited common elements behind the unit. Beyond the limited common elements are lands owned by the homeowners association and which are used for a drainage swale to benefit the community. The buildings within the

community on this block are separated by approximately 40 feet. The Board notes that the units are staggered in orientation so the separation distances vary but, generally, the condominium buildings are 40 feet apart from one another. The Applicant's property is oriented in a similar manner as other units on the block. The Applicant has not demonstrated how the Property is any more unique than any other property within the neighborhood. A review of the site plan provided by the opposition also demonstrates that the Applicant, as an end unit, has more limited common element area than its neighbors. The Board was not convinced that the Property had a uniqueness which created an exceptional practical difficulty.

- b. The Applicant failed to prove that the Property could not be developed in strict conformity with the Sussex County Zoning Code. The Property is already developed with a dwelling that complies with the Code. Assuming, *arguendo*, that an outdoor area is needed to reasonably use the Property, the Applicant could install patio pavers like its neighbors. It even appears that the Applicant considered this option but chose a deck instead for reasons which were motivated by finances and not the condition of the Property. For these reasons, the Board finds that the Property could be developed in strict conformity with the Code and that the variance is not necessary to enable reasonable use of the Property.
- c. The Board finds that the Applicant is creating its own exceptional practical difficulty by proposing to construct a deck which does not fit within the building envelope. The Applicant's decision to construct a deck 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 a patio 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 Applicant seek to build the deck as proposed for purposes of convenience, profit, and / or caprice. Since the Applicant can build a patio that can comply the Sussex County Zoning Code, the need for the variance is something created by the Applicant's wants rather than an unusual physical condition relating to the Property. The Applicant has thus created its own exceptional practical difficulty.
- d. The Board also has concerns about the impact of the deck on the essential character of the neighborhood. The installation of this deck would bring the Applicant's principal structure closer to the drainage swale. The drainage swale is in place to serve the community and alleviate flooding concerns. The Board shares the concerns of the opposition that construction of the deck in such close proximity to the swale could threaten the integrity of the swale and negatively impact drainage in the community. Furthermore, the proposed location of the deck would bring the Applicant's structure closer to its neighbor to the rear and would impact the neighbors' ability to develop its property. The Board fears that the approval of this variance request would result in a domino effect where others on that block would seek similar relief thereby affecting the character of the neighborhood. Additionally, the Board has concerns that the approval of this variance would threaten the integrity of the separation distance requirement set forth in the Sussex County Zoning Code.
- e. Since the variance is not necessary to enable the reasonable use of the Property, the Board also finds that the variance requested is not the minimum variance necessary to afford relief. Furthermore, the Board finds

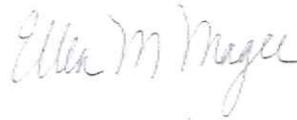
that no variance is necessary to afford relief since the Property has already been developed in compliance with the Sussex County Zoning Code.

The Board denied the variance application finding that it failed to meet the standards for granting a variance.

Decision of the Board

Upon motion duly made and seconded, the variance application was denied. The Board Members in favor of the Motion to deny were Dr. Kevin Carson, Mr. Jeffrey Chorman, Ms. Ellen Magee, and Mr. John Williamson. Mr. Brent Workman voted against the Motion to deny the variance application.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY



Ellen M. Magee
Chair

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

Date March 17, 2020.