

**BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY**

**IN RE: STEVEN STANISZEWSKI**

**(Case No. 12514)**

A hearing was held after due notice on March 15, 2021. The Board members present were: Dr. Kevin Carson, Mr. Jeff Chorman, Mr. John T. Hastings, Mr. John Williamson, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for variances from the separation distance requirements for a proposed structure.

Findings of Fact

The Board found that the Applicant is requesting a variance of 10 feet from the forty (40) feet separation distance requirement between buildings for a proposed deck. The Property is located on the east side of Arthurs Town Road within Bahamas Beach Cottages (911 Address: 602 Arthurs Town Road, Bethany Beach) said property being identified as Sussex County Tax Map Parcel Number: 1-34-17.00-44.00-57. After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a survey of the Property dated October 20, 2020, correspondence regarding the Application, a portion of a site plan, an expanding condominium location plan, findings of fact for Case Nos. 10273-2008, 10282-2008, 10346-2009, and 11365, a drawing of the proposed structure, 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 two letters in support of and five letters in opposition to the Application.
3. The Board found that Steven Staniszewski and Jim Brennan were sworn in to testify about the Application. Mr. Staniszewski submitted an additional letter in support of the Application.
4. The Board found that Mr. Staniszewski testified that the Property is part of a condominium and that he wanted to build a deck at this home.
5. The Board found that Mr. Staniszewski testified that he applied for and received a building permit from the County.
6. The Board found that Mr. Staniszewski testified that that, after completing the deck, he and his wife decided to increase the size of the deck but, when applying for the second building permit, it was discovered that the original permit should not have been issued due to the separation distance between the buildings requirement.
7. The Board found that Mr. Staniszewski testified that he was advised that, if he wished to add to the deck, a variance would be necessary.
8. The Board found that Mr. Staniszewski testified that there are similar decks in the neighborhood and that other variances have been granted while others do not have variances.
9. The Board found that Mr. Staniszewski testified that he proposes to expand the length of the deck and add 3 feet. The new deck, after the expansion, will measure 10 feet wide by 30 feet long.
10. The Board found that Mr. Staniszewski testified that the lot is unique as it has an odd-shaped and the Applicants do not have a clear understanding of the lot boundaries.
11. The Board found that Mr. Staniszewski testified that the Property cannot otherwise be developed as it is the only area to use and build a deck.

12. The Board found that Mr. Staniszewski testified that the exceptional practical difficulty was not created by the Applicant but by how the lots and homes were originally created.
13. The Board found that Mr. Staniszewski testified that the deck will not alter the essential character of the neighborhood as there are similar decks in the area.
14. The Board found that Mr. Staniszewski testified that the variance requested is the minimum request to afford relief.
15. The Board found that Mr. Staniszewski testified that he has spoken with neighbors and the neighbor has submitted a letter in support of the Application.
16. The Board found that Mr. Staniszewski testified that the deck will not be enclosed.
17. The Board found that Mr. Staniszewski testified that this deck has also been approved by the HOA.
18. The Board found that Mr. Staniszewski testified that there will be no steps to the rear as it will be connected to the existing deck.
19. The Board found that Mr. Staniszewski testified that an elevated deck is being requested because the Applicant has health issues and found the issues increased by pests when at ground level.
20. The Board found that Mr. Staniszewski testified that a smaller deck would not accommodate the entire family without the addition.
21. The Board found that Mr. Brennan testified that the insurance for the limited common elements is covered by homeowner's insurance and by the HOA master policy but the association's master policy would not cover the deck.
22. The Board found that Mr. Brennan testified that the Applicant would have to get separate insurance for the deck.
23. The Board found that Mr. Brennan testified that he has a similar deck on his unit.
24. The Board found that Mr. Brennan testified that the Applicant wanted a 14 foot deck but that was denied. He felt that a 10 foot deck was fair.
25. The Board found that Mr. Brennan testified that homes are attached by sheds.
26. The Board found that Mr. Brennan testified that this property has an odd lot line.
27. The Board found that one person appeared in support of and no one appeared in opposition to the Application.
28. 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 lot in a condominium community with odd lot lines. Near the middle of the lot, the side property lines turn 90 degrees on both sides of the lot. These conditions are unique and create an odd building envelope. The Property is also unique because the ground level is houses pests which make it difficult for the Applicant to use the outdoor area outside the unit. These conditions have created an unnecessary hardship and exceptional practical difficulty for the Applicant who seeks to construct a new deck on the lot but is unable to do so without a variance.
  - b. The unnecessary hardship and exceptional practical difficulty are not being created by the provisions of the Sussex County Zoning Code.
  - c. Due to the uniqueness of the Property and situation, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The lot is small and has a unique shape which is further significantly limited by the separation distance requirements. The structures on neighboring lands were placed by neighbors and the Applicant seeks to construct a deck on the lot but is unable to do so without violating the Sussex County Zoning Code. The Board is convinced that the variance is necessary to enable the reasonable use of the Property as the variance will allow the Applicant to

improve the lot as proposed. The Board is convinced that the shape and location of the structure is reasonable, which is confirmed when reviewing the survey provided by the Applicant. The Board also notes that the addition is needed because the pests at the ground level make use of the ground level outdoor space difficult.

- d. The exceptional practical difficulty and unnecessary hardship were not created by the Applicant. The Property has unique conditions, as discussed above, and those conditions have limited the building envelope on the Property and have created an exceptional practical difficulty. Importantly, the Applicant did not create the unique lot line or the pest problem. The Applicant is unable to construct a reasonable deck due to the unique size and shape of the Property. The Board also notes that the Applicant originally built a deck only to later discover that the deck did not meet the separation distance requirements.
- e. 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 Applicant seeks to construct a reasonably sized deck on the lot. The Board was not convinced by the opposition that the variance would somehow alter the essential character of the neighborhood or be detrimental to the public welfare. The opposition only presented general concerns but not substantial evidence that the variance would alter the essential character of the neighborhood. The Applicant, however, produced evidence of other decks and variances in the neighborhood and letters of support for the Application.
- f. 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 Applicant to place a reasonable deck on the Property. The Board is convinced that the deck is the minimum sized structure to afford reasonable use of the Property as the deck will accommodate the Applicant's family and will be elevated to avoid the pests. The deck is also smaller than the Applicant originally sought in his discussions with the homeowners association representatives.
- g. The condition or situation of the Property and the intended use of the Property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the Sussex County Zoning Code.

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 of the Motion to approve were Dr. Kevin Carson, Mr. Jeffrey Chorman, Mr. Travis Hastings, 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 Williamson  
Chair

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

Date May 17, 2021