

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY
IN RE: TOBY J. CHROSTOWSKI & ALEXANDRA M. CHROSTOWSKI
(Case No. 11507)

A hearing was held after due notice on January 5, 2015. The Board members present were: Mr. Dale Callaway, Mr. Jeff Hudson, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman.

Nature of the Proceedings

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

Findings of Fact

The Board found that the Applicants were seeking a variance of five (5) feet from the thirty (30) feet front yard setback requirement for a proposed dwelling. This application pertains to certain real property located west of Coastal Highway (Route One) and being north of Baltimore Street approximately 225 feet west of Andrew Street and being Lot 18, First Addition to Bay View Park Subdivision (911 Address: 39667 Baltimore Street, Bethany Beach, DE); said property being identified as Sussex County Tax Map Parcel Number 1-34-20.11-34.00.

1. The Board was given copies of the Application, a portion of the tax map of the area, and an undated survey of the Property.
2. The Board found that the Office of Planning and Zoning received two (2) letters in support to the Application and had not received any correspondence in opposition to the Application.
3. Toby Chrostowski was sworn in to testify about the Application. John Sergovic, Esquire, presented the Application on behalf of the Applicants and submitted exhibits to the Board to review including photographs of the Property.
4. The Board found that Mr. Sergovic stated that the lot measures 7,020-square-feet in size and that a minimum lot in an MR (Medium Residential) district is 10,000-square-feet in size.
5. The Board found that Mr. Sergovic stated that the size of the Property is unique.
6. The Board found that Mr. Sergovic stated that homes on neighboring properties also encroach into the front yard setback area and that almost all structures on the other side of the street violate the front yard setback requirements.
7. The Board found that Mr. Chrostowski testified that he plans to demolish the existing dwelling and build a new home which will be a slightly larger home so that his children and grandchildren will visit.
8. The Board found that Mr. Chrostowski testified that the existing home does not comply with the flood plain elevation and that he would need to raise the home two (2) feet to comply with the flood plain elevation.
9. The Board found that Mr. Chrostowski testified that the existing structure has a porch only 13.7 feet from the front property line but the house is 25 feet from the front property line.
10. The Board found that Mr. Chrostowski testified that the proposed dwelling will be the same distance from the front property line as the existing dwelling but not the existing porch.
11. The Board found that Mr. Chrostowski testified that the existing dwelling violates the side yard setback requirement but that the proposed dwelling will meet the side yard setback requirements.
12. The Board found that Mr. Chrostowski testified that he plans to garden in the backyard.

13. The Board found that Mr. Chrostowski testified that he intends to conform with the uses of neighboring properties and that the placement of the dwelling is consistent with other dwellings in the neighborhood.
14. The Board found that Mr. Chrostowski testified that the variance will not have a detrimental effect on the neighborhood.
15. The Board found that Mr. Chrostowski testified that the modification he requests is the minimum variance necessary to afford relief.
16. The Board found that Mr. Chrostowski, under oath, confirmed the statements made by Mr. Sergovic.
17. The Board found that Mr. Chrostowski testified that the new dwelling will meet flood zone requirements.
18. The Board found that Mr. Chrostowski testified that he hopes to have approximately twelve (12) feet to use for his rear yard after construction of the new dwelling and that the rear yard is currently fifteen (15) feet deep.
19. The Board found that Mr. Chrostowski testified that the proposed size of the dwelling will accommodate his family.
20. The Board found that Mr. Chrostowski testified that the proposed dwelling will be further from the road than the existing dwelling.
21. The Board found that Mr. Chrostowski testified that the proposed three (3) story dwelling will be approximately 3,300-square-feet in size and that the proposed dwelling will have storage and parking underneath.
22. The Board found that Mr. Chrostowski testified that the existing dwelling has no storage.
23. The Board found that Mr. Chrostowski testified that he plans to park cars under the proposed dwelling and that he cannot park under the house right now.
24. The Board found that Mr. Chrostowski testified that the rear yard has flooded in the past.
25. The Board found that Mr. Chrostowski testified that water came within six (6) inches of the house and that the rear yard was flooded during Hurricane Sandy.
26. The Board found that no parties appeared in support of or 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 unique due to its size and susceptibility to flooding. The Property is only 70 feet wide and is smaller than minimum lots in the MR zoning district. The small size of the lot limits the area upon which the Applicants can build a new dwelling to replace the existing one. The narrow width of the lot further restricts the Applicants from building a wider home which may suit their needs. Building farther into the rear yard is also problematic due to occasional flooding in the rear yard. The flooding problems limit the building envelope. The uniqueness of the Property has created an exceptional practical difficulty for the Applicants.
 - b. The variance is necessary to enable reasonable use of the Property. The Applicants seek to construct a reasonable dwelling that complies with the side and rear yard setback requirements and is no farther into the front yard setback than the existing dwelling. The Applicant testified that the space is needed for storage and for family and that the variance is needed to construct a reasonably sized house to meet these needs. The Board was convinced that the Applicants' proposed use was reasonable and that the variance was necessary for that use.
 - c. The exceptional practical difficulty was not created by the Applicants. The Applicants acquired the Property in 2004 and did not create the size of the lot or the flooding issues. As previously noted the size of the lot and the flooding issues of the lot have created the exceptional practical difficulty.

The Board was convinced that the Applicants have not created the exceptional practical difficulty.

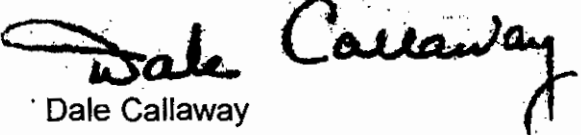
- d. The variance will not alter the essential character of the neighborhood nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare. The un rebutted evidence demonstrates that other homes are similarly situated from the road in the neighborhood and that the placement of this dwelling will be consistent with those homes. Furthermore, the existing dwelling is 25 feet from the road and the porch to the existing dwelling is even closer. The proposed dwelling will be no farther from the road than the existing dwelling with porch. No testimony was presented that would demonstrate that the proposed dwelling would alter the essential character of the neighborhood.
- e. The variance sought is the minimum variance necessary to afford relief and the variance represents the least modification of the regulation at issue. The Applicants are constructing a dwelling which will lessen the degree of non-conformity on the Property as the existing dwelling does not comply with the side yard and front yard setback requirements but the new dwelling will comply with the side yard and rear yard setback requirements while being farther from the road than the existing dwelling and porch. The Applicants have also convinced the Board that the variance is the variance requested is the only variance needed to allow them to construct this reasonable dwelling.

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. Jeff Hudson, Mr. John Mills, and Mr. Norman Rickard. Mr. Brent Workman 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 March 3, 2015