

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

**IN RE: CAROL SZUGAI & PAUL SZUGAI**

**(Case No. 11508)**

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 variances from the side yard and front yard setback requirements.

**Findings of Fact**

The Board found that the Applicants were seeking a variance of 0.5 feet from the ten (10) feet side yard setback requirement for an existing dwelling and a variance of six (6) feet from the thirty (30) feet front yard setback requirement for a proposed covered landing and addition. This application pertains to certain real property located west of Coastal Highway (Route One) and being west of Hassell Avenue and east of Lagoon and begin Lot 83, Second Addition to Bay View Park Subdivision (911 Address: 34969 Hassell Avenue Ext., Bethany Beach, DE); said property being identified as Sussex County Tax Map Parcel Number 1-34-20.11-23.00.

1. The Board was given copies of the Application, a portion of the tax map of the area, and a survey of the Property dated October 7, 2014.
2. The Board found that the Office of Planning and Zoning had not received any correspondence in support of or in opposition to the Application.
3. John Tomlinson was sworn in to testify about the Application.
4. The Board found that Mr. Tomlinson testified that he is the contractor for the Applicants and that the Applicants plan to raise the dwelling six (6) feet due to flooding issues and to construct an addition in the front yard.
5. The Board found that Mr. Tomlinson testified that the dwelling is on a block foundation.
6. The Board found that Mr. Tomlinson testified that the existing dwelling is two (2) stories tall and that the dwelling will not exceed the maximum allowable height requirement of forty-two (42) feet when raised.
7. The Board found that Mr. Tomlinson testified that the dwelling was built originally as a summer home and that the Applicants live on the Property full-time.
8. The Board found that Mr. Tomlinson testified that the Applicants' disabled mother is moving in with them and that the proposed addition will provide more handicap accessible living space for her.
9. The Board found that Mr. Tomlinson testified that the Applicants' mother uses a walker and the Applicants expect that she will need a wheelchair in the future.
10. The Board found that Mr. Tomlinson testified that the kitchen, bedroom, and bathroom are rather small.
11. The Board found that Mr. Tomlinson testified that the addition will include a larger bathroom to allow better access for the Applicants' mother.
12. The Board found that Mr. Tomlinson testified that the dwelling cannot be moved elsewhere on the lot because it is on a concrete foundation.
13. The Board found that Mr. Tomlinson testified that the curved front property line creates a uniqueness to the Property.
14. The Board found that Mr. Tomlinson testified that the existing dwelling was flooded during Hurricane Sandy.

15. The Board found that Mr. Tomlinson testified that the HVAC units will be located under the front porch.
16. The Board found that Mr. Tomlinson testified that the Applicants were not aware of encroachment into the side yard setback until a survey was completed.
17. The Board found that Mr. Tomlinson testified that other homes in the area are larger than this dwelling and that the Applicants hope that the improvements will increase the value of the Property.
18. The Board found that Mr. Tomlinson testified that the flooding of the Property created the need to raise the house and that the disability of the Applicants' mother has created the need for the addition.
19. The Board found that Mr. Tomlinson testified that the need for the variances has not been created by the Applicants.
20. The Board found that Mr. Tomlinson testified that the variances will not alter the character of the neighborhood.
21. The Board found that Mr. Tomlinson testified that the variances requested represent the minimum variances to afford relief.
22. The Board found that no parties appeared in support of or in opposition to the Application.
23. 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 the unique shape of the front yard property line and its susceptibility to flooding from an adjacent lagoon. The circumstances are also unique because the Applicants' mother, who lives with them, is disabled and additional space is needed to accommodate her needs. The uniqueness of the Property and the need for the addition have created an exceptional practical difficulty.
  - b. The Property cannot be developed in strict conformity with the Sussex County Zoning Code. The existing two-story dwelling was constructed on a concrete foundation and needs to be raised to avoid future flood damage. The Applicants were unaware that the existing dwelling did not comply with the side yard setback requirement and the foundation would need to be renovated in order for the dwelling to comply with the side yard setback requirement. The cost of this renovation would be a substantial hardship to the Applicants with little or no benefit to neighboring properties; especially given the fact that the variance is less than one (1) foot. Meanwhile, the Applicants need to construct the addition to better accommodate their disabled mother but cannot construct the addition in the rear yard due to the flooding issues on that side of the Property. As such, the addition needs to be constructed in the front yard and the buildable area in the front yard is limited due to the curvature of the front property line. The existing dwelling and the proposed addition are reasonable and it is clear that the variances are necessary to enable the reasonable use of the Property.
  - c. The exceptional practical difficulty was not created by the Applicants. The flooding from the lagoon, which is a natural event, has clearly created a difficulty for the Applicants as the dwelling needs to be raised to avoid future flood damage. The flooding also restricts the Applicants from constructing an addition in the rear yard to accommodate their disabled mother. The Applicants did not cause the flooding or the need for the additional space. Likewise, the Applicants did not create the need for the side yard variance. The un rebutted testimony evidences that the

Applicants were unaware that the existing dwelling encroached into the side yard setback by less than a foot until a recent survey showed the encroachment. No evidence was presented that convinced the Board that the exceptional practical difficulty was created by the Applicants.

- 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 dwelling has been in its current location for quite some time and no evidence was presented that the dwelling's encroachment into the side yard setback area has altered the character of the neighborhood or somehow been detrimental to the neighborhood. The testimony of Mr. Tomlinson evidences that the proposed addition will enhance the home and the neighborhood. Mr. Tomlinson testified that other homes in the neighborhood are larger than this dwelling and that the dwelling, as raised and with the addition, will not alter the essential character of the neighborhood.
- e. The variances sought are the minimum variances necessary to afford relief and the variances requested represent the least modifications possible of the regulations at issue. The Applicants have demonstrated that the side yard variance requested will allow the existing dwelling to remain on its existing foundation and that the proposed addition is the minimum size needed to afford relief as the addition will provide additional space for the Applicants' mother to navigate around the home.
- f. The Board also found that the approval of this variance represents a reasonable accommodation to the Applicants and their mother. The Applicants' mother is disabled and has trouble ambulating. As such, she is a member of a protected class. The addition to the dwelling will offer her better living conditions and accessibility within the home.

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, Mr. Norman Rickard, and Mr. Brent Workman. No Board Members 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