

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: GREGORY WHEELER & CHAMINIE WHEELER

(Case No. 11797)

A hearing was held after due notice on July 11, 2016. The Board members present were: Mr. Dale Callaway, Mr. John Mills, Mr. Jeff Hudson, Mr. Brent Workman, and Mr. Norman Rickard.

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 are seeking a variance of eight (8) feet from the thirty (30) feet front yard setback requirement for an existing dwelling. This application pertains to certain real property located on the west side of Hassell Avenue approximately 283 feet north of Assawoman Street. (911 Address: 35211 Hassell Avenue, Bethany Beach); said property being identified as Sussex County Tax Map Parcel Number 1-34-20.12-33.00.

1. The Board was given copies of the Application, a survey of the Property dated April 12, 2016, 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 Mark Redden was sworn in to testify about the Application.
4. The Board found that Mr. Redden testified that the Applicants recently purchased the Property. The Property is located in the FEMA flood zone and the Applicants need to raise the dwelling due to a significant amount of water in the crawl space. The house will be raised 8 feet and there will space for parking beneath the home.
5. The Board found that Mr. Redden testified that the Property is unique because the existing structure is non-conforming and was constructed prior to the FEMA flood maps. The house was constructed in the 1950s or 1960s. The lot is also oddly shaped.
6. The Board found that Mr. Redden testified that the Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code.
7. The Board found that Mr. Redden testified that the exceptional practical difficulty was not created by the Applicants. Notably, the Applicants did not construct the house.
8. The Board found that Mr. Redden testified that the variance will not alter the essential character of the neighborhood as the existing house will simply be raised. There are also taller dwellings in the area.
9. The Board found that Mr. Redden testified that the variance requested is the minimum variance to afford relief.
10. The Board found that Mr. Redden testified that new stairs and a landing will be built to access the dwelling and front porch. The existing house is not designed to allow for an internal staircase and the new stairs and landing are necessary to access the dwelling. The stairs and landing have been designed to minimize the encroachment into the setback area.
11. The Board found that Mr. Redden testified that the variance is necessary to enable reasonable use of the Property.
12. The Board found that no parties appeared in support of or in opposition to the Application.
13. 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 as it is irregularly shaped and suffers from flooding problems. The crawl space under the existing dwelling typically floods and the dwelling needs to be raised to alleviate the problems associated with the flooding. The flooding problems combined with the odd shape of the lot have created a limited building envelope on the Property. Consequently, the Applicants are unable to raise the dwelling and provide adequate access thereto without violating the Sussex County Zoning Code. It is clear to the Board that the lot's unique characteristics have created this exceptional practical difficulty for the Applicants. The Board also notes that the dwelling appears to pre-date the enactment of the Sussex County Zoning Code.
- b. Due to the uniqueness of the lot, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property is bordered by water and has an odd angle. The proximity to the water often leaves portions of the Property under water and the existing dwelling needs to be raised out of the flood plain. The Applicants seek to raise the dwelling and to construct stairs and a landing to provide safe access to the home but are 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 Applicants to raise the dwelling and to construct a reasonably sized deck and stairs on the Property. The Board is convinced that the shape and location of these structures are also reasonable, which is confirmed when reviewing the survey provided by the Applicants.
- c. The exceptional practical difficulty was not created by the Applicants. The Applicants did not create the size and shape of the lot or cause the flooding problems on the lot; all of which limit the building envelope on the Property. The unique characteristics of the Property are clear when reviewing the survey. The Board is convinced that the exceptional practical difficulty was not created by the Applicants but was created the lot's unique characteristics. The Applicants also did not place the dwelling on the lot as it was placed on the lot many years ago by a prior owner.
- 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 raising of the dwelling and the construction of stairs and a landing will have no effect on the character of the neighborhood. The existing dwelling has been on the Property for many years without a complaint noted in the record and the record evidences that there are taller homes in the neighborhood as well. Furthermore, no evidence was presented which would indicate that the variance would somehow alter the essential character of the neighborhood or be detrimental to the public welfare.
- e. 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 Applicants have demonstrated that the variance sought will allow the Applicants to raise the existing dwelling while providing safe access to the Property. The Board is convinced that the Applicants have taken appropriate measures to limit the intrusion of these structures into the setback areas.

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 member 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 September 13, 2016.