

**BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY**  
**IN RE: TOBY M. CHROSTOWSKI & ALEXANDRA M. CHROSTOWSKI**  
**(Case No. 11878)**

A hearing was held after due notice on November 21, 2016. The Board members present were: Mr. Dale Callaway, Mr. John Mills, Mr. Jeff Hudson, Mr. Norman Rickard, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for variances from the front yard and side yard setback requirements.

Findings of Fact

The Board found that the Applicants are seeking a variance of 0.9 feet from the ten (10) feet side yard setback requirement on the west side for an existing dwelling and porch and a variance of 13.3 feet from the thirty (30) feet front yard setback requirement for an existing porch. This application pertains to certain real property is located on the north side of Baltimore Street approximately 225 feet west of Andrew Street in Bayview Park (911 Address: 39667 Baltimore Street, Bethany Beach); 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 letter from the Board of Adjustment dated March 3, 2015, a copy of the Findings of Fact for Case No. 11507, a portion of the tax map of the area, an aerial photograph of the Property, a survey of the Property dated November 9, 2004, and a survey of the Property dated September 20, 2016.
2. The Board found that the Office of Planning & Zoning received three (3) letters of support to the Application and no correspondence in opposition to the Application.
3. The Board found that Toby Chrostowski was sworn in to testify about the Application. John Sergovic, Esquire, presented the case on behalf of the Applicants and submitted exhibits for the Board to review
4. The Board found that Mr. Sergovic stated that the Applicants were granted a variance in 2015 and planned, at that time, to remove the existing structure and build a new home. The Applicants have since discovered it is cost prohibitive to tear down the existing dwelling and they now plan to elevate the existing structure.
5. The Board found that Mr. Sergovic stated that, when the Applicants purchased the Property, the dwelling had a cantilevered living space with a porch underneath and this portion of the house encroached into the front yard setback area. Mr. Chrostowski testified that this space is an integral part of the existing structure and cannot be removed.
6. The Board found that Mr. Sergovic stated that the small lot measures 7,020 square feet in size making it unique. The Property is smaller than a regular lot in an MR zone.
7. The Board found that Mr. Sergovic stated that the existing dwelling was built in 1958 or 1959.
8. The Board found that Mr. Sergovic stated that the Property is susceptible to flooding and raising the dwelling will decrease flooding issues.
9. The Board found that Mr. Sergovic stated that there is a lagoon to the rear yard and a boat ramp on the north side of the lot which create the flooding issues on the Property. During Hurricane Sandy, water came within six (6) inches of the dwelling.

10. The Board found that Mr. Sergovic stated that, due to the physical conditions, the Property cannot be otherwise developed in strict conformity with the Sussex County Zoning Code.
11. The Board found that Mr. Sergovic stated that the Applicants seek to elevate the dwelling and there will be no changes to the existing footprint other than the raising of the structure.
12. The Board found that Mr. Sergovic stated that the difficulty is not being created by the Applicants.
13. The Board found that Mr. Sergovic stated that the variances will not alter the essential character of the neighborhood as the location of structures in the community are not uniform.
14. The Board found that Mr. Sergovic stated that the variances requested are the minimum variances necessary to afford relief. The dwelling cannot be shifted into compliance when being raised because it would still encroach into setback areas. Additionally, the dwelling cannot be moved towards the rear yard due to flooding issues.
15. The Board found that Mr. Chrostowski, under oath, affirmed the statements made by Mr. Sergovic.
16. The Board found that Mr. Chrostowski testified that he originally planned to tear down the structure but found out it was cost prohibitive to build a new house.
17. The Board found that Mr. Chrostowski testified that raising the dwelling ten (10) feet will elevate it above the flood plain.
18. The Board found that Mr. Chrostowski testified that there will be storage and garage space under the dwelling and elevating the dwelling will enable him to park cars under the home as well. He is not planning to create additional living space by elevating the home.
19. The Board found that Mr. Chrostowski testified that the dwelling is a two story home.
20. The Board found that Mr. Chrostowski testified that he is not aware of any objections from the neighbors.
21. The Board found that Mr. Chrostowski testified that there will be exterior steps in the rear yard and interior steps to the front of the home.
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 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 dwelling, which was constructed prior to the enactment of the Sussex County Zoning Code, encroaches into the front and side yard setback areas. The dwelling needs to be elevated to avoid problems associated with flooding but the home cannot be raised while still complying with the Sussex County Zoning Code. While there is space in the rear yard for the home to be located, raising the home and moving it farther into the rear yard is problematic due to occasional flooding in the rear yard. The flooding problems limit an already small building envelope. The uniqueness of the Property has, thus, created an exceptional practical difficulty for the Applicants.
  - b. Due to the uniqueness of the situation, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Applicants needs to raise their dwelling in order to avoid flooding problems. Notably,

there is water to the rear yard and a boat ramp to the west side of the Property. The Applicants seek to raise the dwelling to avoid the flooding problems but are unable to do so without violating the Sussex County Zoning Code. It is clear from the survey that the dwelling cannot be raised on the Property in strict conformity with the Sussex County Zoning Code. The Board is thus convinced that the variances necessary to enable the reasonable use of the Property as the variances will allow the Applicants to raise the existing dwelling. The Board is convinced that the size, shape, and location of the dwelling are reasonable. Notably, the raising of the dwelling will not lead to further encroachments into the setback areas.

- 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. The Applicants also did not place the dwelling on the Property. The dwelling was placed on the lot prior to the creation of the Sussex County Zoning Code and the Applicants simply seek to raise it to avoid flood problems. 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. Furthermore, the Board is convinced that the Applicants did not come to the Property with an illegal use in mind. Rather, the Applicants are limited by the physical conditions of the Property and need to variances in order to continue the reasonable use thereof.
- 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 elevating the home will have no effect on the character of the neighborhood. The dwelling has been on the Property since the late 1950s and, despite the longstanding location of the dwelling, no complaints were noted in the record about its location or the potential raising of the home. The Applicants have heard no complaints either from neighbors about the dwelling and Board heard no evidence that the variances would somehow alter the essential character of the neighborhood or be detrimental to the public welfare.
- 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 variances sought will allow the Applicants to elevate the dwelling to avoid flooding problems. The dwelling will encroach no farther into the setback areas as the existing dwelling encroaches. The Board finds that the Applicants have taken steps to minimize the need for the variance by planning to have steps to access the dwelling placed underneath the home. The Board also finds that the Applicants could not move the home to the rear yard due to the flooding problems on the lot.

The Board granted the variance application with modification 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 as modified. 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 voted against the Motion to approve the variance application as modified.

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 2/1/2017