

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: JOHN GIROUARD & COLLEEN GIROUARD

(Case No. 12291)

A hearing was held after due notice on April 15, 2019. The Board members present were: Mr. Dale Callaway, Ms. Ellen Magee, Mr. John Mills, Mr. John Williamson, and Mr. Brent Workman.

Nature of the Proceedings

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

Findings of Fact

The Board found that the Applicants are requesting a variance of 18 feet from the thirty (30) feet front yard setback requirement for a proposed dwelling. This application pertains to certain real property located on the east side of Hassell Avenue Ext., approximately 346 feet south of Hassell Avenue in the Bay View Park Subdivision (911 Address: 34978 Hassell Avenue, Ext., South Bethany); said property being identified as Sussex County Tax Map Parcel Number 1-34-20.11-25.00.

1. The Board was given copies of the Application, a proposed plot plan, a drawing dated February 1, 2019, a survey of the Property dated October 26, 2018, a site plan showing the proposed additions dated February 13, 2019, 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 no correspondence in support of the Application or in opposition to the Application.
3. The Board found that John Girouard and Collen Girouard were sworn in to give testimony. James Fuqua, Esquire, presented the application on behalf of the Applicants and he submitted exhibits to the Board to review.
4. The Board found that Mr. Fuqua stated that the lot is made up of Lot 79 and half of lot 80 in the second addition to Bayview Park, which is an older subdivision. The Applicants have a contract to purchase the Property and they intend to remove the existing home and replace it with a new home.
5. The Board found that Mr. Fuqua stated that the existing home is non-conforming and is located 8.5 feet from Hassell Avenue Ext. at its closest point. The proposed home would be set approximately 3.5 feet farther back than the existing home and will meet all other setback requirements.
6. The Board found that Mr. Fuqua stated that Bayview Park is an older subdivision where homes are being replaced with larger, modern homes.
7. The Board found that Mr. Fuqua stated that the uniqueness of this lot is the location. The Property is the next-to-the-last lot on Hassell Avenue Extended. The lot borders Cedar Pond on the east and wetlands and the bay are located to the west.
8. The Board found that Mr. Fuqua stated that the survey shows the Property is 94 feet deep on the north side and 74 feet deep on the south side. A bulkhead is located in the rear of the lot and a sizeable portion of the lot is unbuildable due to flooding. Furthermore, a sizeable portion of the rear yard is actually in Cedar Pond.
9. The Board found that Mr. Fuqua stated that the actual building area is only 77 feet deep on the north side and 63 feet deep on the south side.
10. The Board found that Mr. Fuqua stated that one-third of the lot is zoned MR which requires lots to be 10,000 square feet but this lot is a non-conforming lot with only

8,497 square feet and the portion of the lot above water consists of only about 7,000 square feet.

11. The Board found that Mr. Fuqua stated that the 30 feet front yard setback was designed for lots of 10,000 square feet and applying it to a lot of only 7,000 square feet would create a hardship for reasonable use.
12. The Board found that Mr. Fuqua stated that the variance would not affect the essential character of the neighborhood as the dwelling would be similar to other homes in the neighborhood.
13. The Board found that Mr. Fuqua stated that the exceptional practical difficulty was not created by the Applicants.
14. The Board found that Mr. Fuqua stated that the lot was created as part of the original subdivision prior to the adoption of the Sussex County Zoning Code.
15. The Board found that Mr. Fuqua stated that the new setback will be greater than that of the original home and will reduce a non-conformity.
16. The Board found that Mr. Fuqua stated that the Board previously granted a variance in Case No. 10065 on February 25, 2008, for Lot 78, which is the lot adjacent to the south, and that the Applicants' lot is even more unique than Lot 78.
17. The Board found that Mr. Fuqua stated that the proposed front yard setback will be similar to other lots in the neighborhood.
18. The Board found that Mr. Fuqua stated that the variance requested is a minimum variance request to enable reasonable use of the Property.
19. The Board found that Mr. Fuqua stated that the Property is required to have two off-street parking spots and the Applicants will guarantee four off-street parking spots to avoid blocking entrance to the neighboring home. The Applicants will keep parked cars off Hassell Avenue Extended.
20. The Board found that Mr. Fuqua stated that the dwelling will be constructed on pilings.
21. The Board found that Mr. Girouard affirmed the statements by Mr. Fuqua as true and correct.
22. The Board found that Mr. Fuqua stated that the land may have eroded since 1960.
23. The Board found that Mr. Fuqua stated that no variances are needed for the steps or HVAC system.
24. The Board found that Mr. Girouard testified that the Applicants wish to build a home with 4-5 bedrooms and between 3,500 – 4,000 square feet. The house is still being designed and the Applicants are trying to have first-floor living.
25. The Board found that Mr. Girouard testified that, if the front yard setback requirement was met, the house would be built where the rear of the house is located and the house would be taller and out of character for the neighborhood.
26. The Board found that Mr. Girouard testified that the house will have a two-car garage with an additional two parking spots for guests.
27. The Board found that Mr. Girouard testified that there is flooding in the rear.
28. The Board found that Mr. Girouard testified that there is about 10 feet from edge of pavement of Hassell Avenue Extended to the property line.
29. The Board found that Michael Wigley, Susan Wigley, and John Hendrickson were sworn in to give testimony in opposition to the Application. Mr. Wigley submitted drawings for the Board to review.
30. The Board found that Mr. Wigley testified that he and his wife own Lot 78 / Parcel 26 which is the property to the south of the Applicants' property. They purchased their lot in 2007.
31. The Board found that Mr. Wigley testified that he and his wife recognize that a variance is needed for the Applicants' property but they believe the size of the variance could be reduced.

32. The Board found that Mr. Wigley testified that Hassell Avenue Extended dead-ends at their lot and Hassell Avenue Extended is 30 feet wide even though most modern roads are 50 feet wide with a cul-de-sac.
33. The Board found that Mr. Wigley testified that he and his wife obtained a variance for the original home on their property (as noted by Mr. Fuqua) but, when they rebuilt their home 2 years ago, they built within required County setbacks. Mr. and Mrs. Wigley are architects.
34. The Board found that Mr. Wigley testified that the Applicants' lot is shallower than their lot but the Applicants can design a nice home on their lot and that the Applicants could build a home consisting of 4,200 square feet with 5 feet side yard setbacks and a 20 foot front yard setback.
35. The Board found that Mr. Wigley testified that he does not oppose the pool but the pool should not be the reason for the hardship since most houses in the neighborhood do not have pools.
36. The Board found that Mr. Wigley testified that the building envelope for his lot is 3,171 square feet and the Applicants' building envelope would be 3,714 square feet with a 20 feet front yard setback.
37. The Board found that Mr. Wigley testified that the Applicants could request a variance of 10 feet instead of 18 feet and still be able to build the house they want.
38. The Board found that Mr. Wigley testified that he wants to make sure that emergency vehicles would have access to their house. He has noticed that cars have been parked in Hassell Avenue Extended in front of the Applicants' home. Mr. Wigley noted that this is a problem because Hassell Avenue Extended is only 14 feet wide paved and its narrowness makes it difficult to turn around. The narrowness of Hassell Avenue Extended is a problem because, as stated by Mr. Wigley, there are wetlands on the other side of the road so Hassell Avenue Extended cannot be expanded in that direction. He believes that a front yard setback of 20 feet would give cars room to turn around more safely.
39. The Board found that Mr. Wigley testified that he wants the Applicants to have adequate off-street parking.
40. The Board found that Mr. Wigley testified that, in his proposal as shown on the drawing he submitted to the Board, he made some adjustments to the Applicants' design. He prefers a 10 feet side yard setback but a 5 feet side yard setback is the better option because it provides a greater front yard setback.
41. The Board found that Mr. Wigley testified that the objection is based on the fact that this request is not the minimum variance request to afford relief.
42. The Board found that Mr. Hendrickson testified that he is the vice-president of the Board of Directors for Bay View Park.
43. The Board found that Mr. Hendrickson testified that most of the lots in Bayview Park were created in the late 1950s and 1960s and the lots in the neighborhood have odd angles. Most lots also have less than 10,000 square feet.
44. The Board found that Mr. Hendrickson testified that trash trucks have to back down the street and a 14 feet wide road is not sufficient for a turn around.
45. The Board found that Mr. Hendrickson testified that his main concern is life-safety as there are older residents in the neighborhood and ambulances and emergency vehicles need to be able to move around.
46. The Board found that Mr. Hendrickson testified that he agrees that it would difficult to fit a home in compliance with the setback requirements.
47. The Board found that Mr. Fuqua stated that there are narrow streets in the neighborhood.
48. The Board found that Mr. Fuqua stated that the opposition is imposing a design on the Applicants even though they obtained their own variance and that there is a difference between the two homes.
49. The Board found that Mr. Fuqua stated that the view of the bay is to the south.

50. The Board found that Mr. Girouard testified that he would lose views of the bay if the 20 feet front yard setback was imposed but he agrees that the minimum variance to afford relief is not about the view.
51. The Board found that two (2) parties appeared in support of the Application and three (3) parties appeared in opposition to the Application.
52. The Board tabled its discussion and vote on the Application until May 6, 2019, at which time it discussed and voted on the Application.
53. 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 for a front yard variance met the standards for granting a variance but the request was modified by the Board to reflect a lesser variance than was originally sought by the Applicants. The findings below further support the Board's decision to approve the Application with modification.
 - a. The Property is unique in size, shape, and condition. The lot is an undersized lot consisting of only 8,497 square feet. The usable portion of the lot is reduced because a significant portion of the rear yard is located in the adjacent Cedar Pond. As such, the portion of the lot which is above water is approximately 7,000 square feet. The shape of the lot is also unique because the north side of the lot is deeper than the south side of the lot. The Property also has unique conditions as the rear yard is susceptible to flooding. These conditions have created a small and unusually shaped building envelope where it is more desirable to build the lot closer to the front yard than the rear yard. These unique characteristics of this Property limit the buildable area available to the Applicants and have created an exceptional practical difficulty for the Applicants who seek to construct a dwelling on the lot.
 - b. Due to the uniqueness of the lot, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property has a unique size, shape, and condition and the buildable area thereof is limited due to these conditions. The Applicants seek to construct a dwelling on the lot but are unable to do so without violating the Sussex County Zoning Code. The Board is convinced that a front yard variance is necessary to enable the reasonable use of the Property as the variance will allow a reasonably sized dwelling to be constructed on the lot. Neighbors acknowledge that the Applicants would not be able to build a dwelling on the lot in strict conformity with the Code and that a front yard variance is necessary. The survey and photographs clearly demonstrate the challenges with building towards the rear of the lot.
 - c. The exceptional practical difficulty was not created by the Applicants. The Applicants did not create the unusual conditions of the Property. The lot was created in the late 1950s or early 1960s and the Applicants are the contract purchasers of the lot. The preexisting conditions have resulted in a limited building envelope on the Property and the small building envelope has created the exceptional practical difficulty. The small building envelope was further limited by the flooding problems in the rear of 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 by the lot's unique characteristics.
 - d. A variance of 10 feet 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 a dwelling that is 20 feet from Hassell

Avenue Extended will have no effect on the character of the neighborhood. The current home on the lot is only 8.5 feet from Hassell Avenue Extended and a dwelling that is 20 feet away will reduce the existing non-conformity. A variance of 10 feet was also not objected to by neighbors. No evidence was presented that a variance of 10 feet would somehow alter the essential character of the neighborhood. The lack of evidence is telling since neighbors did pose concerns about the larger variance requested by the Applicants. The Board notes that it does have concerns about the impact of a greater variance, as requested by the Applicants, on the character of the neighborhood and the effect on the public welfare. The testimony is clear to the Board that Hassell Avenue Extended is a narrow street and large vehicles do not have adequate space to turn around. Neighbors have concerns that emergency vehicles will not have adequate room to navigate since there is no cul-de-sac on the road. Furthermore, a neighbor has testified that cars are sometimes parked in Hassell Avenue Extended and block roadway access. By moving the proposed location of the dwelling farther from Hassell Avenue Extended, additional room may be available for vehicles to safely turn around and would lessen the temptation or, perhaps in some cases, the necessity of persons to park vehicles in the right-of-way. While the Applicants proposed to provide additional off-street parking if the 18 foot variance was granted, it is clear to the Board that the additional space provided by a 10 foot variance would likely benefit the neighborhood and avoid a substantial impairment to appropriate use and development of neighboring and adjacent properties and the reduced variance would not be detrimental to the public welfare.

- e. The variance of 10 feet is the minimum variance necessary to afford relief and the variance represents the least modification possible of the regulation at issue. While it is clear that a variance from the front yard setback is necessary to enable the Applicants to construct a reasonably sized home, the Applicants must demonstrate that the variance they requested is the minimum variance necessary to afford relief. The opposition has proved, in this case, that a lesser variance is appropriate. The Applicants admitted that they are still designing the home and it is clear from their proposal that they did not utilize the side yard setback of 5 feet to maximize their building envelope. The opposition, who are architects, presented clear evidence that a reasonably sized home with the same square footage as the Applicants' proposed home could fit within a building envelope with a 10 foot variance rather than an 18 foot variance. The 10 foot variance is, thus, the minimum variance necessary to afford relief and is the least modification of the regulation at issue. The Board also notes that the Applicant testified that placing the home closer to the front yard would improve his water views but, as correctly noted by the Applicant, the right to a view does not justify the granting of a variance and the Applicants are expected to build their home in compliance with the Code or, at least, minimize encroachments into the setback area.
- f. A variance of 10 feet from the front yard setback requirement was approved.

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 with modification. The Board Members in favor of the Motion to approve with modification were Mr. Dale Callaway, Ms. Ellen Magee, Mr. John Mills, Mr. John Williamson, and Mr. Brent Workman. No Board Member voted against the Motion to approve the variance application with modification.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY



John Mills
Chairman

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

Date June 18, 2019