

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: GEOFFREY S. PIOTROSKI & LYNN M. PIOTROSKI

(Case No. 12302)

A hearing was held after due notice on May 6, 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 variances from the corner front, rear yard, front yard, side yard, and fence height setback requirements for existing and proposed structure.

Findings of Fact

The Board found that the Applicants are requesting the following variances: 1) a variance of 8.2 feet from the fifteen (15) feet corner front setback from Lighthouse Road for a proposed pool, 2) a variance of 6.0 feet from the fifteen (15) feet corner front setback from Lighthouse Road for a proposed set of steps, 3) a variance of 9.0 feet from the fifteen (15) feet corner front setback from Lighthouse Road for a proposed pool house, 4) a variance of 7.6 feet from the fifteen (15) feet corner front setback from Lighthouse Road for a proposed pool house, 5) a variance of 0.5 feet from the maximum fence height variance of 3.5 feet for a proposed fence, 6) a variance of 15.0 feet from the thirty (30) feet front yard setback requirement for existing landing and steps, 7) a variance of 3.9 feet from the thirty (30) feet front yard setback requirement for an existing deck, 8) a variance of 5.0 feet from the fifteen (15) feet side yard setback requirement on the south side for an existing dwelling, 9) a variance of 8.0 feet from the fifteen (15) feet side yard setback requirement on the south side for an existing HVAC system, and 10) a variance of 13.2 feet from the twenty (20) feet rear yard setback requirement for an existing covered porch. This application pertains to certain real property located on the southwest corner of Monroe Avenue and Lighthouse Road in the Edgewater Acres subdivision (911 Address: 38940 & 38934 Monroe Avenue, Selbyville) said property being identified as Sussex County Tax Map Parcel Numbers 5-33-20.19-15.00 & 5-33-20.19-16.00.

1. The Board was given copies of the Application, a survey of the property dated April 12, 2018, a lot consolidation plan dated April 12, 2018, pictures, 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 or in opposition to the Application.
3. The Board found that Geoffrey Scott Piotroski was sworn in to testify about the Application. Blake Carey, Esquire, presented the Application on behalf of the Applicants.
4. The Board found that Mr. Carey stated that this request pertains to Lots 12 and 13 in the Edgewater Acres subdivision. The Applicants purchased Lot 12 with the existing dwelling in 2007 and the unimproved Lot 13 in 2012. These lots have recently been combined into one lot.
5. The Board found that Mr. Carey stated that the Property is located off Route 54.
6. The Board found that Mr. Carey stated that the lots separately are small lots and are non-conforming lots.
7. The Board found that Mr. Carey stated that the dwelling on Lot 12 did not need a variance but the Applicants combined both lots to one parcel and, in doing so, the dwelling became non-compliant and needs the above listed variances.
8. The Board found that Mr. Carey stated that the Applicants plan to construct a pool and pool house on Lot 13.

9. The Board found that Mr. Carey stated that the Property is unique due to the combining of the lots.
10. The Board found that Mr. Carey stated that there have been no improvements to the dwelling by the Applicants and the request is only for variances to bring the existing dwelling into compliance. The existing dwelling, which was built in 2005-6, is on pilings and cannot be moved.
11. The Board found that Mr. Carey stated that the exceptional practical difficulty was not created by the Applicants as the dwelling was existing when they purchased the Property.
12. The Board found that Mr. Carey stated that there is a lagoon to the rear of the Property.
13. The Board found that Mr. Carey stated that the lots are small, narrow, and shallow.
14. The Board found that Mr. Carey stated that the Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code.
15. The Board found that Mr. Carey stated that the variances will not alter the essential character of the neighborhood and the proposed improvements will increase the home values in the area.
16. The Board found that Mr. Carey stated that there is a useless peninsula to the rear of the lot and there is a jersey wall to the road side of the lot.
17. The Board found that Mr. Carey stated that the lot has a limited footprint and there is nowhere else to place the pool.
18. The Board found that Mr. Carey stated that the pool will be fenced in.
19. The Board found that Mr. Carey stated that the variances will not be detrimental to the public welfare.
20. The Board found that Mr. Carey stated that the fence will not be on the property line.
21. The Board found that Mr. Carey stated that the variances requested represent the minimum requests to bring the house into compliance.
22. The Board found that Mr. Carey stated that the portion of the Property where the proposed pool will be located is unique due to its shape.
23. The Board found that Mr. Carey stated that the Property cannot be improved with a pool and pool house without the variances as this is the only area on the Property to make such improvements.
24. The Board found that Mr. Carey stated that the distance from the pool to the existing dwelling is to allow for safety and to allow for a walkway. The Applicants are trying to keep a safe distance from the pool and house.
25. The Board found that Mr. Carey stated that the exceptional practical difficulty was not created by the Applicants but by the size of the lots.
26. The Board found that Mr. Carey stated that the variances are the minimum variances requested to afford relief with a standard size pool.
27. The Board found that Mr. Carey stated that the Applicants sought to have a uniform look in the neighborhood and that the pool house will be setback from Monroe Avenue the same distance as the dwelling.
28. The Board found that Mr. Piotroski affirmed the statements made by Mr. Carey as true and correct.
29. The Board found that Mr. Piotroski testified that there is a DeIDOT right-of-way along the Property with a guard rail but there will be no visibility issues on the adjacent roads due to these structures.
30. The Board found that Mr. Piotroski testified that DeIDOT took a portion of Lot 13 from a prior owner.
31. The Board found that Mr. Piotroski testified that there is a gap between the edge of paving of the adjacent roads and the property line.
32. The Board found that Mr. Piotroski testified that the pool is a standard sized pool and the pool house will look like a house and will have the same siding as the dwelling. There will be no living quarters in the pool house.

33. The Board found that no parties appeared in support of or in opposition to the Application.
34. 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 unrebutted, the Board determined that the application for the variances 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 a small and unusually shaped lot. The Property, which consists of 2 lots, is only 95.53 feet wide and consists of only 10,073 square feet. If the lot were 73 square feet smaller, lesser setback requirements would apply. The Property is also unique because it is a corner lot and has an odd shape in the northwest corner which renders a portion of the lot unbuildable. As such, the building envelope is exceptionally limited. These unique physical conditions have created an exceptional practical difficulty for the Applicants who seek to retain and construct certain structures on the Property.
 - b. Due to the uniqueness of the Property, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Applicants seek to retain and construct certain structures but are unable to do so without violating the Sussex County Zoning Code. The Board is convinced that the variances are necessary to enable the reasonable use of the Property as the variances will allow a reasonably sized dwelling, steps, landing, porch, and HVAC system to remain on the Property and for a proposed pool, pool house, and fence to be placed 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. The Board notes that there are practical safety concerns with placing the pool too close to the existing house and the proposed separation distance between those structures is reasonable.
 - c. The exceptional practical difficulty was not created by the Applicants. There was no evidence that the Applicants created the unique size and shape of the Property. While the Applicants combined the lots, the separate lots are even more unique and would have presented significant building challenges due to their size, shape, and building envelope. Combining the lots provided some, but not much, relief to those challenges. Nevertheless, these unique conditions have created an unusually limited building envelope and have created the exceptional practical difficulty for the Applicants who seeks to retain and construct certain structures on the lot.
 - 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 structures will have no effect on the character of the neighborhood. The unrebutted evidence confirms that the house, steps, deck, and HVAC system have been on the house for years without complaint. The Applicants seek to construct a pool, pool house, and fence and that construction should result in improvements to the Property. No complaints were noted about the existing structures in the record. No evidence was presented 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 regulation at issue. The Applicants have demonstrated that the variances sought will allow the Applicants to retain and construct certain

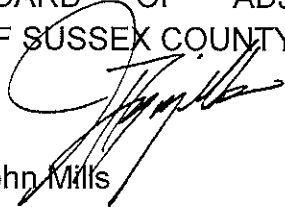
structures on the Property. The Board notes that the existing house, HVAC system, deck, and steps were previously approved and a certificate of compliance was issued for those structures. No changes to those structures have been made or are proposed. The Board is convinced that the Applicants designed the pool and pool house so as to minimize the encroachment into the setback area while providing a safe separation distance between those structures and the house. The Code requires that the fence surrounding the pool be 4 feet tall so the fence height is the minimum variance necessary to afford relief as well.

The Board approved 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 of the motion to approve 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.

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, 2009.