

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: TOBY M. CHROSTOWSKI & ALEXANDRA M. CHROSTOWSKI

(Case No. 12342)

A hearing was held after due notice on August 5, 2019. The Board members present were: Dr. Kevin Carson, Mr. Jeff Chorman, Ms. Ellen Magee, Mr. John Williamson, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for variances from the front yard setback requirements for a proposed dwelling.

Findings of Fact

The Board found that the Applicants are requesting a variance of 5 feet from the thirty (30) feet front yard setback requirement for a proposed dwelling, a variance of 13.2 feet from the thirty (30) feet front yard setback requirement for a proposed dwelling, and a variance of 13.3 feet from the thirty (30) feet front yard setback requirement for a proposed dwelling. This application pertains to certain real property located on the north side of Baltimore Street approximately 226 feet west of Andrew Street in the Bay View Park subdivision (911 Address: 39667 Baltimore Street, Bethany Beach); said property being identified as Sussex County Tax Map Parcel Number 1-34-20.11-34.00. After a hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a deed to the Property, findings of fact for Case No. 11507, findings of fact for Case No. 11878, an affidavit, a survey of the Property dated June 14, 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 two (2) letters in support of and no letters in opposition to the Application.
3. The Board found that Toby Chrostowski and Michael Wigley were sworn in to give testimony about the Application. John Sergovic, Esquire, presented the Application on behalf of the Applicants and he submitted an additional letter of support and architectural renderings of the proposed dwelling.
4. The Board found that Mr. Sergovic stated that this is an application for a proposed dwelling or to elevate the existing dwelling.
5. The Board found that Mr. Sergovic stated that this property received prior variances but, due to economic reasons the building was not completed and the variance approvals expired.
6. The Board found that Mr. Sergovic stated that the Property is unique because the lot consists of only 7,020 square feet and is an undersized lot for the MR district. He argued that the size of the lot has created an exceptional practical difficulty.
7. The Board found that Mr. Sergovic stated that the Property is located in Bayview Park.
8. The Board found that Mr. Sergovic stated that the Property abuts a tidal pond and is susceptible to flooding. He argued that the Property cannot be developed without the variance and the dwelling cannot be moved back on the Property due to flooding.
9. The Board found that Mr. Sergovic stated that, during Hurricane Sandy, water came within 6 inches of the dwelling.
10. The Board found that Mr. Sergovic stated that the Applicants intend to bring the home into compliance with flood regulations but the proposed dwelling will be built in the same footprint of the current dwelling.

11. The Board found that Mr. Sergovic stated that the dwelling will not alter the essential character of the neighborhood as the home has been in the current location since the 1950s.
12. The Board found that Mr. Sergovic stated that the variance is the same variance sought in 2016.
13. The Board found that Mr. Sergovic stated that there have been no complaints from neighbors.
14. The Board found that Mr. Sergovic stated that the variances requested are the minimum variances that will afford relief to bring the existing dwelling into compliance with the flood plain elevation.
15. The Board found that Mr. Wigley, who is the Applicants' engineer, testified that a decision will be made by the homeowner based on costs to either replace the dwelling or to elevate and remodel the current dwelling. Either way, the home will occupy the same footprint and depth of the current dwelling.
16. The Board found that Mr. Wigley testified that, due to a change in the ordinance, side yard variances are no longer being requested.
17. The Board found that Mr. Wigley testified that the proposed dwelling will be in keeping with the character of the neighborhood.
18. The Board found that Mr. Wigley testified that the Applicants request the flexibility to elevate and renovate or to rebuild in this footprint as proposed.
19. The Board found that Mr. Sergovic stated that the house does not conform with the front yard setback requirement. No side yard variance is needed because the Code has changed since the prior variance approval.
20. The Board found that Mr. Chrostowski testified that it will cost more money to remodel the home and the Applicants have not decided whether to remodel or to rebuild.
21. The Board found that Mr. Wigley testified that other homes in the neighborhood encroach into the front yard setback.
22. The Board found that Mr. Wigley testified that he has received no complaints about the existing encroachment.
23. The Board found that Mr. Wigley testified that the intent is to meet the flood zone requirements and that flooding is now an issue.
24. The Board found that Mr. Wigley affirmed the statements made by Mr. Sergovic as true and correct.
25. The Board found that Mr. Sergovic stated that the Application differs from the prior application because the prior application was simply to elevate the home and this application is a request to elevate or to rebuild.
26. The Board found that Mr. Sergovic stated that the elevation allows for parking underneath the home which should alleviate congestion.
27. The Board found that Mr. Wigley testified that the front yard will be the same but the steps will project 5 feet farther into the setback area. The steps were previously located to the side yard.
28. The Board found that Mr. Wigley testified that the HVAC system will comply with the setback requirements.
29. The Board found that Mr. Wigley testified that there is approximately 30 feet from the house to the edge of paving.
30. The Board found that no parties appeared in support of or in opposition to the Application.
31. The Board tabled the discussion on this Application until August 19, 2019, at which time the Board voted on the Application.
32. 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 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 yard setback areas. The dwelling needs to be elevated, either through renovation or rebuild, 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 unnecessary hardship and exceptional practical difficulty for the Applicants.
- b. The unnecessary hardship and exceptional practical difficulty are not being created by the provisions of the Sussex County Zoning Code.
- c. 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, either through renovation or rebuild, 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, either through renovation or rebuild. 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.
- d. The unnecessary hardship and exceptional practical difficulty were 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, either through renovation or rebuild, to avoid flood problems. As previously noted, the size of the lot and the flooding issues of the lot have created the unnecessary hardship and exceptional practical difficulty. The Board was convinced that the Applicants have not created the exceptional practical difficulty and unnecessary hardship. 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.
- e. 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 either through renovation or rebuild, 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.