

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: KATHLEEN D. STONE & JOHN C. MEYER

(Case No. 12527)

A hearing was held after due notice on May 17, 2021. The Board members present were: Dr. Kevin Carson, Mr. Jeff Chorman, Mr. John Williamson, and Mr. Jordan Warfel.

Nature of the Proceedings

This is an application for variances from the front yard setback requirement and the landscape buffer requirements in the Combined Highway Corridor Overlay Zone (CHCOZ) for proposed structures.

Findings of Fact

The Board found that the Applicants are requesting the following variances: 1) a variance of 34.2 feet from the sixty (60) feet Combined Corridor Overlay Zone (CHCOZ) requirement for a proposed porch and steps, 2) a variance of 30.4 feet from the sixty (60) feet Combined Corridor Overlay Zone (CHCOZ) requirement for a proposed dwelling, 3) a variance of 14.2 feet from the forty (40) feet front yard setback requirement for proposed porch and steps, 4) a variance of 10.4 feet from the forty (40) feet front yard setback requirement for a proposed dwelling, and 5) a variance of 20 feet from the Combined Highway Corridor Overlay Zone (CHCOZ) requirement along Route 1 for an existing fence. This application pertains to certain real property located on the west side of Carolina Street approximately 90 feet northeast of Coastal Highway (Route 1) (911 Address: 38439 Carolina Street, Dewey Beach); said property being identified as Sussex County Tax Map Parcel Number 3-34-20.09-167.00. After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a survey of the Property dated May 29, 2019, a setback information request form, photographs, findings of fact for Case No. 11452, portions of the Sussex County Zoning Code, photographs, deeds, 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 letters in support of and no correspondence in opposition to the Application
3. The Board found that Kathleen Stone was sworn in to give testimony about the Application. Mackenzie Peet, Esquire, appeared on behalf of the Applicants. Ms. Peet provided a video to the Board, which was reviewed during the hearing.
4. The Board found that Ms. Peet stated that the Property is located along Route 1 in the area commonly referred to as the "Forgotten Mile".
5. The Board found that Ms. Peet stated that the Applicants are not seeking variances from the side yard setback requirements because the proposed dwelling will have the outdoor shower and HVAC systems flush with the dwelling.
6. The Board found that Ms. Peet stated that the existing dwelling, which was purchased by the Applicants in 2014, is non-conforming and needs to be replaced. Ms. Peet explained that the current home was built on a cinder block foundation and the house is not level. She noted that there were holes drilled into the cinder block in the basement and, when it rains, the water gathers in the yard and shoots through the holes in the cinder block and pours into the basement. According to Ms. Peet, there are two sump pumps to help relieve the problem and the Applicants invested in a \$40,000.00 rubber membrane surrounding the foundation but those efforts have not corrected the issue.
7. The Board found that Ms. Peet stated that the Property is a 5,334 square foot lot and is in the General Commercial Zoning District

8. The Board found that Ms. Peet stated that the building is located towards the rear of the Property but is almost entirely within the front yard setback and CHCOZ setback areas.
9. The Board found that Ms. Peet stated that the existing dwelling is in need of repair which prompted this Application.
10. The Board found that Ms. Peet stated that proposed porch and steps will be in the same location as the existing porch and steps.
11. The Board found that Ms. Peet stated that the fence was built prior to the adoption of the CHCOZ ordinance but Applicants would like to include the variance for the fence for completion for the entire property.
12. The Board found that Ms. Peet stated that the Property is a uniquely shaped flag lot with a uniquely shaped buildable area which includes the Applicants' driveway that limits the buildable area and these conditions have created an unusually shaped buildable area and an exceptional practical difficulty.
13. The Board found that Ms. Peet stated that the basement flooding from the unstable cinder block is unique and requires the demolition and construction of a replacement dwelling.
14. The Board found that Ms. Peet stated that the current conditions on the lot restrict the Applicants' reasonable use of the Property to make normal improvements to the aged existing structure.
15. The Board found that Ms. Peet stated that, because of the physical conditions, there is no possibility that the Property can be developed in strict conformity with the provisions of the Zoning Code.
16. The Board found that Ms. Peet stated that the buildable area is in the rear which is the location of the driveway and the only access to the Property.
17. The Board found that Ms. Peet stated that the existing dwelling has been located in the front yard setback for decades and was not created by the Applicants.
18. The Board found that Ms. Peet stated that the Applicants are proposing to make improvements to remedy the issues with the existing dwelling and will not be increasing the non-conformity of the dwelling.
19. The Board found that Ms. Peet stated that the variances will not alter the essential character of the neighborhood as the Applicants are proposing to rebuild the proposed structure in the same location as the existing structure. The new dwelling will have a foundation.
20. The Board found that Ms. Peet stated that there has been no opposition from neighbors and two letters of support have been included with the Application.
21. The Board found that Ms. Peet stated that these requests are the minimum variances necessary to afford relief and will represent the least modifications possible of the regulations in issue.
22. The Board found that Ms. Peet stated that Lots 5 and 6 were all one parcel originally but were subdivided and the easement historically existed over the front parcel.
23. The Board found that Ms. Peet stated that the front yard is considered to be along Route 1 but the access is from Carolina Street.
24. The Board found that Ms. Stone affirmed statements made by Ms. Peet as true and correct.
25. The Board found that Ms. Stone testified that the water is pumped out to the yard and flows back in the house again.
26. The Board found that Ms. Stone testified that a French drain was installed to pump out to the front of the Property.
27. The Board found that Ms. Stone testified that there have been no complaints about the location of the existing structure.
28. The Board found that Ms. Stone testified that is approximately 15 feet from the existing fence to the edge of paving of Route 1 and that there is gravel and curbing in that area.

29. The Board found that Ms. Stone testified that there are no additional plantings proposed for the Property in the CHCOZ area.
30. The Board found that no one appeared in support of or in opposition to the Application.
31. 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 a small and unusually shaped lot. The lot consists of only 5,334 square feet and is shaped like a flag. While the access to the lot is from Carolina Street, the Property is also adjacent to Route 1 and there are large setbacks from Route 1 that limit the lot's developable area. Since the only access to the Property is from Carolina Street, much of the building envelope towards the north side of the lot is needed for access and parking. The lot is quite narrow as it measures 42 feet wide along Route 1 and this size and shape has created an exceptionally limited building envelope. These conditions greatly restrict the building envelope on the Property and affect the Applicants' ability to reasonably develop the lot. It is clear to the Board that the lot's unique characteristics have created an unnecessary hardship and exceptional practical difficulty for the Applicants who seeks to make reasonable improvements on the lot.
 - 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 lot, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property is a small and unusually shaped lot. The Applicants seek to construct a new home with related structures on the lot 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 the Applicants to make those improvements 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 also notes that the structures will be in a similar location to the existing structures.
 - d. The exceptional practical difficulty and unnecessary hardship were not created by the Applicants. The Applicants did not create the lot size or shape. Those conditions have limited the building envelope of the lot. The unique characteristics of the Property are clear when reviewing the survey. The Applicants also did not place the existing house on the lot and that house needs to be replaced due to major foundational issues. The house was placed on the lot by a prior owner years ago. The Board is convinced that the unnecessary hardship and exceptional practical difficulty were not created by the Applicants but was created the lot's unique characteristics and the deterioration of the existing home.
 - 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 the structures will have no effect on the character of the neighborhood. The dwelling (with porch and steps) will be located in a similar location to the prior house and structures and no complaints about those structures were noted in the record. The fence is existing and has been the lot for many years as well. Neighbors have indicated support of

the request and there was no evidence that the structures would present visibility concerns along Route 1. Furthermore, no evidence was presented which would indicate that the variances would somehow alter the essential character of the neighborhood or be detrimental to the public welfare.

- f. 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 construct a reasonably sized home and related structures on the lot. The Board notes the Applicants were constrained by the unique conditions of the lot but still took efforts to minimize encroachments by redesigning the house, HVAC, and outdoor shower so that no side yard variances were needed. Even with those redesign efforts, variances were still needed.
- g. The condition or situation of the Property and the intended use of the Property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the Sussex County Zoning Code.

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 of the Motion to approve were Dr. Kevin Carson, Mr. Jeffrey Chorman, Mr. Jordan Warfel, and Mr. John Williamson. No Board Member voted against the Motion to approve the variance application. Mr. Travis Hastings did not participate in the discussion or vote on this application.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY



John Williamson
Chair

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

Date August 2, 2024