

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: JEFF CHORMAN AND MOLLY CHORMAN

(Case No. 12578)

A public hearing was held after due notice on June 21, 2021. The Board members present were: Dr. Kevin Carson, Mr. John T. Hastings, Mr. Jordan Warfel, and Mr. John Williamson.

Nature of the Proceedings

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

Findings of Fact

The Board found that the Applicants are requesting a variance of 21 feet from thirty (30) feet front yard setback requirement for proposed dwelling and deck and a variance of 25 feet from thirty (30) feet front yard setback requirement for proposed steps. This application pertains to certain real located on the northwest side of Alabama Drive approximately 428 feet northeast of North Bayshore Drive in Broadkill Beach (911 Address: 4 Alabama Avenue, Milton); said property being identified as Sussex County Tax Map Parcel Number 2-35-3.12-106.00. After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, an aerial photograph of the Property, a survey of the Property dated November 12, 2019, a setback information request form, a memorandum and letters from DNREC, pictures, letters in support of the Application, a survey dated October 28, 2020, architectural drawings of the proposed dwelling, 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 the Application and no correspondence in opposition the Application.
3. The Board found that Molly Chorman and Kris Connelly were sworn in to give testimony about the Application.
4. The Board found that Mr. Connelly testified that the Applicants own a bayfront property on Broadkill Beach.
5. The Board found that Mr. Connelly testified that the properties in this area were created in 1969 before the County, State, or Federal rules.
6. The Board found that Mr. Connelly testified that the Applicants are seeking to replace the existing dwelling after first trying to renovate the existing dwelling.
7. The Board found that Mr. Connelly testified that the Property is in the VE flood zone and that, in order to renovate more than 50% of the existing dwelling, the home would have to be elevated.
8. The Board found that Mr. Connelly testified that the DNREC beach preservation line runs through the Property and restricts where a house can be built. He noted that most of the Property is within the building restriction line.
9. The Board found that Mr. Connelly testified that the Applicants had to obtain approval from DNREC to build this proposed home.
10. The Board found that Mr. Connelly testified that the house will consist of multiple stories and will meet the County's height limitation. The home will also be elevated on pilings.
11. The Board found that Mr. Connelly testified that this is a case of an exceptional practical difficulty for the Applicants.

12. The Board found that Mr. Connelly testified that the Property is a shallow lot and it has an easement access through this property for the adjacent property to the northwest (Lot 105).
13. The Board found that Mr. Connelly testified that Alabama Avenue is a dead end street.
14. The Board found that Mr. Connelly testified that the placement of the septic on the west side of the lot also affects the need for a variance.
15. The Board found that Mr. Connelly testified that, in 2016, DNREC completed a dune replenishment project so the water is now 100 yards farther away.
16. The Board found that Mr. Connelly testified that the plans for the dwelling are FEMA compliant, County Building Code compliant and DNREC compliant.
17. The Board found that Mr. Connelly testified that the Property is unique and the exceptional practical difficulty was not created by the Applicants as they purchased the Property in 2015.
18. The Board found that Mr. Connelly testified that the existing cottage has structural deficiencies and will not accommodate the Applicants' family and the home cannot be renovated.
19. The Board found that Mr. Connelly testified that the variances are necessary to enable reasonable use of the Property.
20. The Board found that Mr. Connelly testified that granting the variances will not alter the essential character of the neighborhood and are the minimum variances to afford relief.
21. The Board found that Mr. Connelly testified that a new septic system was installed in 2015 and a new septic system is not needed.
22. The Board found that Mr. Connelly testified that the HVAC unit will meet the setback requirements.
23. The Board found that Mr. Connelly testified that the house will not be any closer to Alabama Avenue than the existing house and the steps will not be any closer to Alabama Avenue than the existing shower.
24. The Board found that Mr. Connelly testified that granting the variances will not create visibility issues on Alabama Avenue but will make it easier for people to get to the beach as the Applicants will be able to park underneath the new dwelling and will not have to park on the street.
25. The Board found that Ms. Chorman testified that the septic system was designed for three bedrooms and that the dwelling will be a three-bedroom house.
26. The Board found that no one appeared in support of or in opposition to the Application.
27. 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, shape, and physical conditions. The lot is a small lot measuring 50 feet deep and consists of only 5,750 square feet. The Property is adjacent to Broadkill Beach and the Delaware Bay and the Property is burdened by a DNREC building restriction line which renders most of the Property subject to heightened DNREC restrictions that greatly limit the developability of the lot. Due to those restrictions, the northeast side of the property is limited in how it can be developed. Consequently, the buildable area is pushed to the west. The northwest side of the lot, however, is burdened by an easement for the adjacent parcel to the north and the location of a septic system. These unique conditions greatly limit the building envelope and render it exceptionally shallow and narrow. Moreover, the existing home has structural deficiencies and needs

to be replaced. These conditions have created an unnecessary hardship and exceptional practical difficulty for the Applicants who seek to build a dwelling and related structures on the Property as noted above. It is frankly difficult to see how the Applicants could develop the lot in any fashion without a variance.

- 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 Property and the situation, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Applicants seek to construct a proposed dwelling and related structures on the lot but are unable to do so while complying with the Sussex County Zoning Code. The Board is thus convinced that the variances are necessary to enable the reasonable use of the Property as the variances will allow the Applicants to construct the dwelling and related structures on the lot. The Board is convinced that the size, shape, and location of the structures are reasonable.
- d. The unnecessary hardship and exceptional practical difficulty were not created by the Applicants. As discussed above, the Property has unique conditions which have limited the Applicants' ability to reasonably develop the Property. The Applicants did not create the unique conditions of the lot. The lot was created prior to the enactment of the Sussex County Zoning Code and is burdened by DNREC regulations which greatly limit the buildable area of the lot. The existing home has structural problems and needs to be replaced. Flood regulations also require that the house be elevated. These conditions are unique to the Property and 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 the variances in order to reasonably develop the Property as proposed.
- 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 variances will have no effect on the character of the neighborhood. The variances will allow the Applicants to place a reasonably sized home and related structures as proposed. There was no substantial evidence which demonstrated that the variances would somehow alter the essential character of the neighborhood or be detrimental to the public welfare. The Board has received letters of support for the Application as well. The Board notes that the elevation of the home on pilings should afford better parking for the Property by allowing cars to park underneath the home. Moreover, the structures will not encroach farther into the setback area than the existing structures. The Board also notes that Alabama Avenue is a dead end street which terminates near the Property and is lightly traveled. As such, the encroachments into the front yard setback should not pose traffic or visibility issues for cars traveling along Alabama Avenue. Lastly, there were no complaints in the record about the location of the prior structures and the proposed structures will be in a similar location.
- 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 place a reasonably sized home

and related structures on the Property. The Board finds that the Applicants took reasonable measures to otherwise limit encroachments into the setback area but were constrained by the Property's unique conditions. The Board notes that the DNREC restrictions and flood zone regulations particular limit how this lot can be developed and the Applicants have worked with DNREC officials to obtain necessary approvals.

- 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 were Dr. Kevin Carson, Mr. Travis Hastings, Mr. Jordan Warfel, and Mr. John Williamson. No Board Member voted against the motion to approve. Mr. Jeffrey Chorman 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 September 13, 2021