

**BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY**

**IN RE: MICHAEL CHANOUX & MARGARET K. CHANOUX**

**(Case No. 12584)**

A public hearing was held after due notice on July 12, 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 requirements for proposed structures.

Findings of Fact

The Board found that the Applicants are requesting variances which will apply to Lots 1, 2, and 3 as shown on a site plan dated May 4, 2021. Lots 1, 2, and 3 are collectively referred to hereinafter as the "Property". The Applicants seek the following variances applicable to each lot: 1) a variance of 20 feet from the forty (40) feet front yard setback requirement along Route 1 for proposed dwellings and related structures and 2) a variance of 10 feet from the forty (40) feet front yard setback requirement along Lockerman Road for proposed dwellings and related structures. This application pertains to certain real located on the southwest side of Lockerman Road and the northeast side of Coastal Highway (Route 1) approximately 0.55 miles northwest of Steamboat Landing Road (911 Address: 28708, 28736, & N/A Lockerman Road, Milton); said property being identified as Sussex County Tax Map Parcel Number 2-35-16.00-8.00, 8.01, & 8.02. After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, aerial photographs of the Property, a site plan dated May 4, 2021, materials submitted with Case No. 11820, the Findings of Fact for Case No. 11820, 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 the Application.
3. The Board notes that the Applicants previously received variances from the minimum lot width and lot size requirements in 2016.
4. The Board found that Michael Chanoux, Margaret Chanoux, and Ken Christenbury were sworn in to give testimony about the Application. John Sergovic, Esquire, appeared on behalf of the Applicants.
5. The Board found that Mr. Sergovic stated that, in the 1960s, DeIDOT widened Route 1 which caused the road to be elevated and no longer accessible to these lots.
6. The Board found that Mr. Sergovic stated that Lockerman Road was previously referred to as Route 14 and dead ends at the Broadkill River. He noted that Lockerman Road used to be an arterial road until the bridge over the Broadkill River was removed.
7. The Board found that Mr. Sergovic stated that there is approximately 50-100 feet between the guard rail from Route 1 and the property line.
8. The Board found that Mr. Sergovic stated that the requested variances are to provide these lots with the same setbacks as you would find in subdivision lots rather than arterial lots.
9. The Board found that Mr. Sergovic stated that Route 14 is no longer an arterial road and Route 1 is inaccessible from the properties.
10. The Board found that Mr. Sergovic stated that the inaccessibility to Route 1 led to oddly shaped lots when subdivided.

11. The Board found that Mr. Sergovic stated that the lots are wide but not deep.
12. The Board found that Mr. Sergovic stated that an existing one-story house and shed encroach but the shed will be removed.
13. The Board found that Mr. Sergovic stated that Lot 3 has an issue as well as it is adjacent to where Route 1 "jags".
14. The Board found that Mr. Sergovic stated that the woodland and wetlands are on State property.
15. The Board found that Mr. Sergovic stated that the odd shape of Lot 3 creates a narrow building envelope on the Broadkill River side of the lot.
16. The Board found that Mr. Sergovic stated that the land was inherited by Mr. Chanoux's grandfather.
17. The Board found that Mr. Sergovic stated that the widening of Route 1 created long and narrow lots which were approved by a previous Board of Adjustment case.
18. The Board found that Mr. Sergovic stated that the exceptional practical difficulty was not created by the Applicants but by the changes to Route 1 during the 1960s and that residue left by DelDOT left a tough to develop area.
19. The Board found that Mr. Sergovic stated that it was noted at the prior Board hearing that the Applicants may need variances to build.
20. The Board found that Mr. Sergovic stated that there is a slope from Route 1 to these properties which creates a unique situation and the properties cannot be accessed from Route 1.
21. The Board found that Mr. Sergovic stated that the requested setback for Lockerman Road is 30 feet which is common to roads that are non-arterial.
22. The Board found that Mr. Sergovic stated that Route 1 is not really arterial to the Applicants since they cannot access it directly from the lots.
23. The Board found that Mr. Sergovic stated that the lots are through lots.
24. The Board found that Mr. Sergovic stated that granting the variances will not alter the essential character of the neighborhood.
25. The Board found that Mr. Sergovic stated that these variances are the minimum variances to afford relief.
26. The Board found that Mr. Christenbury testified that two site plans have been included with the Application including site plan identified as "S-1", which shows what is existing today, and the site plan identified as "S-2", which shows the Applicants' request.
27. The Board found that Mr. Christenbury testified that there is no room to build much on Lot 3.
28. The Board found that Mr. Christenbury testified that the character of this neighborhood is these lots as there is a cemetery and agricultural lands nearby.
29. The Board found that Mr. Christenbury testified that the properties slope towards the Broadkill River.
30. The Board found that Mr. Christenbury testified that the prior owner lost land to DelDOT for Route 1.
31. The Board found that Mr. Christenbury testified that Lot 1 is only 89.48 feet deep on the south end but has 80 feet of setbacks.
32. The Board found that Mr. Christenbury testified that, if the variances are granted, there would be approximately 50 feet of buildable area but without the variances there is approximately 18 feet of buildable area.
33. The Board found that Mr. Chanoux affirmed the statements made by Mr. Sergovic as true and correct.
34. The Board found that Mr. Chanoux testified that the properties will be developed within the variance approval period and that he and his wife plan to give a lot to each of their children.
35. The Board found that no one appeared in support of or in opposition to the Application.

36. 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 in shape, size, topography, and historical development. The Property consists of 3 separate parcels that are adjacent to Route 1 and Lockerman Road. The Property was created by the taking of DeIDOT in the 1960s to create Route 1 and this taking left an unusually shaped parcel that was later subdivided. The Property also slopes towards the Broadkill River. Since the Property borders on Route 1 and Route 14, all three lots are subject to through lot setback requirements which greatly limit the developable area of the lots. The Board notes that one parcel only has slightly over 9 feet of depth of the building envelope at one point. Notably, the lots are subject to through lot setback requirements but the lots only have vehicular access to Route 14. The unique conditions of the Property have created an exceptional practical difficulty and unnecessary hardship for the Applicants who seek to reasonably develop the Property with dwellings and related structures.
  - 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 has unique conditions and the buildable area thereof is limited due to these conditions. The Applicants seek to construct dwellings and related structures on the lots but are unable to do so without violating the Sussex County Zoning Code. The Board is convinced that front yard variances are necessary to enable the reasonable use of the Property as the variances will allow the Applicants to reasonably develop the lots.
  - d. The exceptional practical difficulty and unnecessary hardship were not created by the Applicants. The Applicants did not create the unusual conditions of the Property. The Property was originally part of a larger parcel taken by DeIDOT as part of the creation of Route 1. The resulting taking left an oddly shaped parcel adjacent to unused state-owned lands. This taking took place prior to the enactment of the Sussex County Zoning Code. The Property was later subdivided but the depth of the overall property did not change with the subdivision. Effectively the Property has a shallow depth and that depth makes it difficult to reasonably develop the Property. The unique characteristics of the Property are clear when reviewing the survey and the Applicants' testimony. The Board is convinced that the exceptional practical difficulty and unnecessary hardship were not created by the Applicants but were created by the lot's unique characteristics and the taking by DeIDOT.
  - 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 reasonably develop the lots with dwellings. The neighborhood includes a cemetery and agricultural lands so the impact on the neighborhood should be minimal. The Board also notes that there is a significant distance from the paving of Route 1 to the property line so the encroachment will not likely be as noticeable as it would if the property line matched the edge of paving. There

was no evidence that the variances would somehow alter the essential character of the neighborhood or be detrimental to the public welfare.

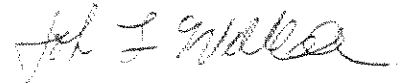
- f. The variances sought are the minimum variances necessary to afford relief and the variances requested represent the least modifications possible of the regulations at issue. The Applicants have demonstrated that the variances sought will allow the Applicants to reasonably develop the Property with dwellings and related structures.
- 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 the Application. Mr. Jeff 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 20, 2021.