

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

**IN RE: TIMOTHY GOUCHER & MARY ALICE MCNAMARA**

**(Case No. 12586)**

A public hearing was held after due notice on August 2, 2021. The Board members present were: Dr. Kevin Carson, Mr. Jeff Chorman, Mr. John T. Hastings, Mr. Jordan Warfel, and Mr. John Williamson.

Nature of the Proceedings

This is an application for a variance from the front yard setback requirement for a proposed structure.

Findings of Fact

The Board found that the Applicants are requesting a variance of 7.7 feet from the thirty (30) feet front yard setback requirement. This application pertains to certain real property that is located on the east side of Belle Road within the Bayview Park Subdivision (911 Address: N/A); said property being identified as Sussex County Tax Map Parcel Number 1-34-20.11-65.00. 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 front yard average survey plan dated May 19, 2021, a front yard average survey plan dated March 10, 2021, a survey of the Property dated December 17, 2020, 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 Timothy Goucher was sworn in to give testimony about the Application and he submitted exhibits to the Board to review.
4. The Board found that Mr. Goucher testified that his family have been residents of Bay View Park for over 12 years and he recently sold his cottage and bought this waterfront property. He intends to propose to construct a new house on the lot. Initially, he intended for the house to have a 20 foot front yard setback and a 10 foot rear yard setback. He believes that the reduced front yard setback will allow for a larger rear yard.
5. The Board found that Mr. Goucher testified that they wanted to move the house more to the front of the Property so that adjacent property owner's water view would not be blocked by the proposed dwelling.
6. The Board found that Mr. Goucher testified that he contacted his neighbors to the south and they support the Application.
7. The Board found that Mr. Goucher testified that there is an average front yard setback requirement of approximately 25 feet.
8. The Board found that Mr. Goucher testified that the lot consists of only 5,191 square feet and is shaped like a parallelogram.
9. The Board found that Mr. Goucher testified that there are existing houses in the area that appear to be built with a 10 foot rear yard and the front yard variance would allow for the Applicants to maintain a 10 foot rear yard also.
10. The Board found that Mr. Goucher testified that building to a rear yard setback of 5 feet would adversely impact the water views of neighbors.
11. The Board found that Mr. Goucher testified that the essential character of the neighborhood will not be altered by the variance as there are two residences to the south of the Property with similar setbacks and Belle Road is a dead end street.

12. The Board found that Mr. Goucher testified that the variance would bring the front yard setback to 20 feet which is a greater front yard than two of the residences to the south which have front yard setbacks of 19.4 feet and 17.7 feet.
13. The Board found that Mr. Goucher testified that the Property is served by public sewer and well water; though the well has not yet been drilled.
14. The Board found that Mr. Goucher testified that the house will consist of 3,500 square feet as shown on the drawing but the footprint of the house may be smaller than what is shown on the plans. He believes that it is likely the house will be smaller and narrower than what is shown on the plans.
15. The Board found that Mr. Goucher testified that the property line does not extend into the lagoon.
16. The Board found that Mr. Goucher testified that there will be no steps on the front of the dwelling that will extend farther into setbacks.
17. The Board found that Mr. Goucher testified that the house will be on pilings and that the HVAC will be within the building footprint and may be under the raised deck.
18. The Board found that Mr. Goucher testified that there was no flooding on this property during Hurricane Sandy.
19. The Board found that Mr. Goucher testified that there will be no visibility issues on Belle Road if this variance is granted and there is no gap between the edge of paving on Belle Road and the property line.
20. The Board found that Mr. Goucher testified that, if the request was denied, he would build to the rear yard setback line and block the neighbor's view and he does not want to do that.
21. The Board found that Patrick O'Sullivan was sworn in to give testimony in opposition to the Application and he submitted exhibits to the Board to review.
22. The Board found that Mr. O'Sullivan testified that he believes the plan is ambiguous because he does not know the Applicants' plans.
23. The Board found that Mr. O'Sullivan testified that the Applicants did not contact him but he is opposed to the Application as the setback requirement is 30 feet and the Applicants are giving themselves a self-granted 25 feet setback.
24. The Board found that Mr. O'Sullivan testified that the average front yard setback survey is incorrect as two of the properties (Lots 23A and 23B) shown on the survey are not on Belle Road.
25. The Board found that Mr. O'Sullivan testified that the Application has inaccuracies including measurements of the neighboring properties.
26. The Board found that Mr. O'Sullivan testified that the extra 10 feet would block the view from his home to the south down the bay to the Ocean City skyline. He finds the additional 5 feet in the front yard to be unacceptable.
27. The Board found that Mr. O'Sullivan testified that other houses in the neighborhood are smaller and that newer houses are built to the 30 foot front yard setback requirement.
28. The Board found that Mr. O'Sullivan testified that the variances would adversely affect his property values and the enjoyment of his property.
29. The Board found that Mr. O'Sullivan testified that other houses were built prior to the enactment of the Sussex County Zoning Code.
30. The Board found that Mr. O'Sullivan testified that he believes the Applicants are using more than allowed and that the proposed house is large.
31. The Board found that Mr. O'Sullivan testified that the houses to the south are not affected by the variance request but the houses to the north are affected.
32. The Board found that Mr. O'Sullivan testified that the lot has not been developed since the 1950s.
33. The Board found that Mr. O'Sullivan testified that the street flooded during Hurricane Sandy.

34. The Board found that Mr. Goucher testified that he is meeting with his architect and should have the final plans for the dwelling within a few weeks. He noted the house will measure 38 feet tall and have 2 garages with 2 stories above the garage.
35. The Board found that no one appeared in support of and one person appeared in opposition to the Application.
36. The Board voted to leave the record open until the Board of Adjustment meeting on September 13, 2021, for the limited purpose of allowing the Applicants to submit an updated drawing showing the location of the proposed dwelling and related structures by August 31, 2021, and to allow public comments specific to the drawing at the Board's hearing on September 13, 2021.
37. Thereafter, the Applicant submitted an updated site plan dated August 20, 2021, which the Board reviewed. A second hearing was held on September 13, 2021, at which time Mr. Goucher and Mr. O'Sullivan were present to testify. No other persons appeared at that hearing to testify about the Application.
38. The Board found that Mr. Goucher testified that the house will be located 7 feet from the rear property line and that the top level will cantilever out to help with views.
39. The Board found that Mr. O'Sullivan testified that he reviewed the survey and feels that the Applicants could otherwise comply with the setback requirements.
40. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, which the Board weighed and considered, the Board determined that the application failed to meet the standards for granting a variance. The findings below further support the Board's decision to deny the Application.
  - a. The Applicants failed to demonstrate that the Property was unique and that the uniqueness of the Property has created an exceptional practical difficulty. The lot is a small but not irregularly shaped and the lot benefits from reduced setback requirements under the small lot ordinance and the average front yard setback requirements. These provisions greatly enhance the size of the building envelope for the Property. The Property is currently vacant but the Applicants want to construct a large home on the Property. Rather than design a home in compliance with the Code, the Applicants have designed a home that requires a variance into the front yard setback area. The Applicants did not present evidence of unique topography or other conditions which would effectively limit their ability to develop the Property and which created an exceptional practical difficulty. Rather, the difficulty is clearly the result of the Applicants' intention to construct the dwelling within the setback area. The apparent reason for this request is an aesthetic reason and has nothing to do with the conditions of the lot. Quite simply, there appears to be room to place a reasonably sized dwelling on the lot; albeit not in the Applicants' preferred location. As such, the Applicants have failed to demonstrate that there was some unique condition which has created the exceptional practical difficulty.
  - b. The Applicants failed to prove that the Property could not be developed in strict conformity with the Sussex County Zoning Code. The Property is presently vacant and is a proverbial "blank slate" upon which a house can be designed and constructed. Rather than comply with the Code, the Applicants propose to construct a home that needs a variance. It is clear that the Applicants have chosen not to build in strict conformity with the Code rather than developing the lot to comply with the Code's setback requirements. While the location of the dwelling, may not be the location the Applicants prefer, the Applicants failed to demonstrate that they could not otherwise comply with the Code's setback requirements. The Applicants are not entitled to have a dwelling in this location. For these reasons, the Board finds that the Property could be developed in strict

conformity with the Code and that the variance is not necessary to enable reasonable use of the Property.

- c. The Board finds that the Applicants are creating their own exceptional practical difficulty by proposing to construct a dwelling which does not fit within the building envelope. The Applicants' decision to construct the house in this location is the reason for the need for a variance and has nothing to do with the size, shape, or condition of the Property. There is no unusual condition to the Property which has created this difficulty. The building envelope appears to otherwise be able to fit a house of reasonably size, albeit in a location which differs from the Applicants' preference, without the need for the variance. The Board was not convinced that the variance request was the product of a *need*. Instead, the variance request appears to be the product of a *want* as the Applicants seek to build the house as proposed for purposes of convenience, profit, and / or caprice. Since the Applicants can develop the Property in compliance with the Sussex County Zoning Code, the need for the variance is something created by the Applicants' wants rather than an unusual physical condition relating to the Property. The Applicants have thus created their own exceptional practical difficulty.
- d. The Board finds that the dwelling will alter the essential character of the neighborhood. The proposed dwelling will block views of the neighbor to the north and will also project farther into the front yard setback area than is allowed by Code. The opposition testified that newer homes comply with the 30 foot front yard setback requirement and the Applicants did not present testimony or evidence to refute that testimony. Should the Applicants build as proposed, this will reduce the average front yard setback in the neighborhood and would allow others to similarly build to a reduced front yard setback. The Board finds that this would alter the character of the neighborhood.
- e. Since the variance is not necessary to enable the reasonable use of the Property, the Board also finds that the variance requested is not the minimum variance necessary to afford relief. The Board finds that no variance is needed to afford relief since there is space to place a reasonably sized dwelling on the Property in compliance with the Sussex County Zoning Code.

The Board denied the variance application finding that it failed to meet the standards for granting a variance.

Decision of the Board

Upon motion duly made and seconded, the variance application was denied. The Board Members in favor of the Motion to deny were Dr. Kevin Carson, Mr. Jeffrey Chorman, Mr. Travis Hastings, Mr. Jordan Warfel, and Mr. John Williamson. No Board Member voted against the Motion to deny the variance 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 November 1, 2021.