

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

**IN RE: LOUIS C. PUGLIESE & BARBARA C. PUGLIESE**

**(Case No. 12630)**

A public hearing was held after due notice on November 15, 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 variances from the front yard setback requirement for proposed structures.

Findings of Fact

The Board found that the Applicants are requesting the following variances:

1. A variance of 4.9 feet from the thirty (30) feet front yard setback requirement for a proposed dwelling and steps;
2. A variance of 5.9 feet from the thirty (30) feet front yard setback requirement for a proposed dwelling and steps; and
3. A variance of 3.4 feet from the thirty (30) feet front yard setback requirement for a proposed dwelling and steps.

This application pertains to certain real located on the northeast side of Bayfront Drive within the Quillens Point Subdivision (911 Address: N/A); said property being identified as Sussex County Tax Map Parcel Number 134-5.00-330.00 (hereinafter "the Property"). 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 August 6, 2020, a house location plan, Quillens Point subdivision plans, architectural plans, correspondence in support of the Application, letters in opposition to the Application with exhibits, and a portion of the tax map of the area.
2. The Board found that the Office of Planning & Zoning received no letters in support of the Application and three letters in opposition to the Application.
3. The Board found that Louis Pugliese, Barbara Pugliese, and Bruce Mears were sworn in to give testimony about the Application. David Hutt, Esquire, appeared on behalf of the Applicants
4. The Board found that Mr. Hutt stated that the subject property is Lot 21 on Bayfront Drive within the Quillen Points subdivision and the Property is zoned Medium Residential (MR).
5. The Board found that Mr. Hutt stated that, in general in the MR Zoning District, lots should consist of a minimum of 10,000 square feet with a minimum lot width of 75 feet. He noted that the Property consists of less than 10,000 square feet and benefits from the small lot ordinance with reduced rear and side yard setback requirements.
6. The Board found that Mr. Hutt stated that the Property has 9,970 square feet and that the subdivision plan filed in 1982 incorrectly shows that the Property is a 10,000 square foot lot.
7. The Board found that Mr. Hutt stated that the lot is undeveloped except there is a bulkhead and dock on the Property which was installed by a prior owner.
8. The Board found that Mr. Hutt stated that 1,500 square feet of the lot is unbuildable as the Property extends beyond the bulkhead.



9. The Board found that Mr. Hutt stated that the house will be 38 feet from the edge of paving of Bayfront Drive.
10. The Board found that Mr. Hutt stated that the Quillen's Point restrictive covenants match Sussex County setbacks.
11. The Board found that Mr. Hutt stated that the Property is unique as there is approximately 1/5 of the lot that is unusable.
12. The Board found that Mr. Hutt stated that the variances are necessary to enable the reasonable use of the Property and the Property cannot be developed in strict conformity with the Sussex County Zoning Code.
13. The Board found that Mr. Hutt stated that the Applicants did not create the lot or the exceptional practical difficulty but the Applicants have spent hours and hours on the design of the house and they even reduced the size of the house to minimize the need for variances.
14. The Board found that Mr. Hutt stated that granting the variances will not alter the essential character of the neighborhood.
15. The Board found that Mr. Hutt stated that the Applicants have four letters of support from neighbors.
16. The Board found that Mr. Hutt stated that the variances requested are the minimum variances that will still allow almost 40 feet from the house to the edge of paving on Bayfront Drive.
17. The Board found that Mr. Hutt stated that the Property has unique physical circumstances due to its proximity to Indian River Bay and the shallowness of the lot.
18. The Board found that Mr. Hutt stated that the lot was created in 1981 by a prior owner and that, if the development went through the subdivision process now, the lot would look different.
19. The Board found that Mr. Hutt stated that there have been 9 other variances granted in the neighborhood including 6 front yard variances. He was unsure if there were pools on those properties. He noted that the Board approved variances in Case No. 12230 on November 19, 2018.
20. The Board found that Mr. Hutt stated that, although the Property has lost almost 20 feet of buildable space, the variance request is for only 5 feet for the home. He noted that the encroaching portion of the structures consist of approximately 324 square feet.
21. The Board found that Ms. Pugliese affirmed the statements made by Mr. Hutt as true and correct.
22. The Board found that Ms. Pugliese testified that they have lived in the area for 20 years and that they had been looking for waterfront property where they could have a boat.
23. The Board found that Ms. Pugliese testified that the request to move the house forward to have a little more space in the rear of the Property is for the safety of grandchildren.
24. The Board found that Mr. Pugliese testified that they did contact the homeowners association and did not receive a response.
25. The Board found that Mr. Pugliese testified that it is a unique community, and it should be taken on a case-by-case basis. He noted that the community has different houses which are oriented differently.
26. The Board found that Mr. Pugliese testified that they were denied permission to attend a homeowner association meeting where they could have explained the request to the homeowner association board members.
27. The Board found that Mr. Pugliese testified that the house will add value to the neighborhood and that the request will not adversely affect the neighboring and adjacent properties.
28. The Board found that Mr. Mears, who is the Applicant's designer, affirmed the statements made by Mr. Hutt as true and correct. Mr. Mears submitted a full-size plan for Board members to review.
29. The Board found that Mr. Mears testified that he worked on this plan with the Applicants for over five months.



30. The Board found that Mr. Mears testified that the house will be three stories tall.
31. The Board found that Mr. Mears testified that the side setbacks are 5 feet but the Applicants are not building to those setbacks because doing so would lessen the waterfront view for neighbors.
32. The Board found that Mr. Mears testified that, when drawing the house plans, the rooms have been compressed without making it a tall, ugly, and narrow building. He noted that the master bedroom is 12.6 feet deep which is not typical for a million-dollar home and that the pool will be only 8 feet wide.
33. The Board found that Mr. Mears testified that there are pools in this neighborhood and this is common when there is not a community pool.
34. The Board found that Mr. Mears testified that two out of every three houses designed by him include swimming pools.
35. The Board found that Mr. Mears testified that the homeowner owns the bulkhead and that DNREC will not permit extending the bulkhead to capture back some of the buildable area.
36. The Board found that Ms. Pugliese testified that she was unaware how much of the area of the Property was unbuildable and that she was surprised that so much of the lot extended beyond the bulkhead. She originally thought the lot went to the bulkhead.
37. The Board found that Ms. Pugliese testified that the pool on Lot 20 is a pool on the third deck.
38. The Board found that Mr. Pugliese testified that based on the current market that the purchase of the Property happened very quickly and there was some confusion about the survey and what it meant.
39. The Board found that Mr. Pugliese testified that the house on Lot 20 has 6,000 square feet but the Applicants have designed their home to consist of 5,300 square feet and was designed to be the minimum variance to afford relief.
40. The Board found that Mr. Pugliese testified that there is not enough room for the pool in the side yard.
41. The Board found that Mr. Hutt stated that the small lot ordinance does not provide benefit for this lot as it is only a front yard variance that is being sought and in addition there is 1/5 of the lot that is unbuildable.
42. The Board found that Mr. Mears testified that it makes more sense to have the pool in the rear yard and there is no room at either side of the house for a pool.
43. The Board found that Mr. Mears testified that this house will be an asset to the community and raise property values for all properties on that street.
44. The Board found that Mr. Mears testified that it will not affect neighbors and there are four letters of support from the nearest neighbors.
45. The Board found that Mark Tingle and Tom Farrah were sworn in to give testimony in support of the Application.
46. The Board found that Mr. Tingle testified that he lives two lots away from the Property and that he supports the Applicants because they have taken time to plan a house that will look great on the lot.
47. The Board found that Mr. Tingle testified that there is no neighborhood pool but there is a lot reserved to build a community pool. He noted that the association requires a 66% vote in favor of the pool and they have been unable to get the votes to build that pool.
48. The Board found that Mr. Tingle testified that the homeowners association had a meeting where they drafted the letter of opposition but the meeting was not open to all homeowners.
49. The Board found that Mr. Farrah testified that he owns Lot 25.
50. The Board found that Mr. Farrah testified that there are 99 lots in this community with 86 homes and that, when the current construction is complete, there will be 10 undeveloped lots.
51. The Board found that Mr. Farrah testified that the outcome of this hearing will not change the community which was started in 1981.



52. The Board found that Mr. Farrah testified that he is on the homeowner association board and, though his name is on the letter of opposition, he voted against opposing the variance.
53. The Board found that John Szczur was sworn in to give testimony in opposition of the Application.
54. The Board found that Mr. Szczur testified that he owns Parcel 349 and he is a member of the homeowner association board of directors. He is opposed to the variance because the right-of-way is owned by the homeowners association and cannot be used by the Applicants.
55. The Board found that Mr. Szczur testified that the Applicants knew the limits when they purchased the Property.
56. The Board found that Mr. Szczur testified that the Applicants could have taken advantage of the small lot ordinance and designed a house that would meet setbacks.
57. The Board found that Mr. Szczur testified that the homeowners association was not given a copy of the building plans.
58. The Board found that Mr. Szczur testified that he has safety concerns regarding fire suppression and asked if the height of the house would have to be lowered if the house was built to the 5 feet setback.
59. The Board found that Mr. Szczur testified that the house would block views if the Applicants built to the 5 feet side yard setback.
60. The Board found that Mr. Mears testified that four-story buildings require fire suppression and that this house is a three-story building.
61. The Board found that Ms. Pugliese testified that the Architectural Review Committee guidelines state that complete and final plans must be submitted and that their plans were only completed in the past few days.
62. The Board found that Mr. Huft stated that the Applicants are aware that the homeowners association has the ownership of the 50 foot right-of-way and that the point he was making when pointing this out is the distance from the dwelling to the edge of paving beyond the right-of-way.
63. The Board found that two people appeared in support of and one person appeared in opposition to the Application.
64. 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 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 topography. The Property is a shallow lot which is only 188 feet deep. A significant portion of the rear yard is located underwater. The survey provided by the Applicants demonstrates that over 25 feet of the rear yard is located beyond an existing bulkhead thereby making this part of the lot unbuildable. Moreover, the development of the property up to the existing bulkhead is likely problematic due to flooding and structural concerns related to the proximity to the bulkhead. As such, there are no improvements within several feet of the bulkhead. Naturally, these conditions encourage development closer to the front yard property line than the rear yard property line. These unique characteristics of this Property have created a limited building envelope and have created an unnecessary hardship and exceptional practical difficulty for the Applicants who seeks to reasonably improve the Property with a dwelling and steps.
  - 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 physical characteristics and the buildable area thereof is limited due to those characteristics. The Applicants seek to construct a home and related

improvements 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 those improvements to be made on the lot. The Board is convinced that the shape and location of the structures are also reasonable, which is confirmed when reviewing the survey provided by the Applicants.

- d. The unnecessary hardship and exceptional practical difficulty were not created by the Applicants. As previously stated, the Property has unique conditions and these conditions have resulted in a limited building envelope on the Property. These conditions have created the unnecessary hardship and exceptional practical difficulty. The Board further notes that the lot and bulkhead were created by a prior owner. The Applicants only recently purchased the lot and have spent months designing a home that would minimally encroach into the setback area.
- 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 house will be of a similar size to other homes in the neighborhood and will be set back approximately 38 feet from the edge of paving of the adjacent road. While opposition submitted concerns to the Board, the Board was not convinced that the variances would alter the essential character of the neighborhood or permanently impair the appropriate use or development of adjacent property, or be detrimental to the public welfare. The Board notes that there is a gap between the edge of paving from the front property line so the front of the lot appears larger than it actually is. The Applicants have designed a home which does not occupy the side yard so that views from neighboring properties of the water are not blocked. The Board notes that letters and testimony of support were submitted as well. Lastly, should the opposition have concerns about the structure, there appears to be a mechanism by which the design may need approval from the homeowners association.
- 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 design a reasonable home on the Property. Approximately 324 square feet of the structures will encroach into the setback areas, which is a small portion of the house even though a much larger portion of the lot is unbuildable. The testimony of the designer clearly demonstrated that the Applicants condensed and compressed the house to minimize encroachments. Moreover, the Applicants' proposed home is smaller than a neighboring home that was recently built.
- 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. Jeffrey Chorman, Mr. Travis Hastings, Mr. Jordan Warfel, and Mr. John Williamson. No Board Member voted against the motion to approve the 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 January 24, 2022.