

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: GEORGE CHURCHWELL & JEANNE CHURCHWELL

(Case No. 12706)

A public hearing was held after due notice on June 27, 2022. The Board members present were: Dr. Kevin Carson, Mr. Jeffrey Chorman, Mr. John T. Hastings, 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 Applicant is requesting the following variances:

1. A variance of 14.2 feet from the thirty (30) feet front yard setback requirement for a proposed addition; and
2. A variance of 6 feet from the thirty (30) feet front yard setback requirement for proposed steps.

This application pertains to certain real property located on the corner of Baltimore Street and Andrew Street within the Bay View Park Subdivision (911 Address: 39662 Baltimore Street, Bethany Beach); said property being identified as Sussex County Tax Map Parcel Number 134-20.11-41.02 ("the Property"). 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 survey of the Property dated March 12, 2022, a survey of the Property dated May 1, 2013, schematics, a photograph, correspondence in support of the Application, and a portion of the tax map of the area.
2. The Board found that the Office of Planning & Zoning received three (3) letters in support of the Application and no correspondence in opposition the Application.
3. The Board found that Mark Redden and George Churchwell were sworn in to give testimony about the Application.
4. The Board notes that Andrew Street is considered the front yard and Baltimore Street is considered the corner front yard for setback purposes.
5. The Board found that Mr. Redden testified that this is a beach property with a small lot and is a corner lot.
6. The Board found that Mr. Redden testified that Andrews Street actually ends shortly after the Property.
7. The Board found that Mr. Redden testified that the house is oddly put together and the Applicants are attempting to clean up the air circulation and create some additional storage but there is not much area within the building envelope to accomplish their goal. He noted that the Applicants have explored other options to accomplish their goals including building higher but they did not think that was practical.
8. The Board found that Mr. Redden testified that the current owners did not build the house but purchased the Property with the home already built.
9. The Board found that Mr. Redden testified that he does not believe the proposal will alter the essential character of the neighborhood as this neighborhood is currently

- exploding with new homes and renovations. He believes that the proposal will be consistent with the neighborhood.
10. The Board found that Mr. Redden testified that they do not believe traffic will be impacted and that there will be no impact on emergency vehicles.
 11. The Board found that Mr. Redden testified that there is currently a two (2) car garage in addition to off street parking in front of the garage. He noted that the Property can serve 4 vehicles.
 12. The Board found that Mr. Redden testified that the home is in a flood zone and the first floor cannot be livable space.
 13. The Board found that Mr. Redden testified that they are adding on rather than building new. He noted that some of the rooms are functional but they are trying to improve what is existing.
 14. The Board found that Mr. Redden testified that the addition will be about 20-21 feet from the edge of paving of Andrew Street if approved.
 15. The Board found that Mr. Redden testified that Andrew Street and Baltimore Street are both dead-end streets.
 16. The Board found that Mr. Redden testified that the well is inside of the proposed building lot.
 17. The Board found that Mr. Redden testified that the lot behind the Property is 1/2 underwater about half of the time but is a buildable lot. Mr. Redden noted that the Applicants attempted to purchase that lot but they were unable to do so due to the price.
 18. The Board found that Mr. Redden testified that they are proposing to place an elevator and fix the stairs in the addition and this proposal will allow the owners to age in place.
 19. The Board found that Mr. Redden testified that they are going to use additional space around the stairs and elevator for expansion and will be utilizing the side towards Andrew Street for the elevator and stairs.
 20. The Board found that Mr. Redden testified that there will be a new landing and entry door to the house.
 21. The Board found that Mr. Redden testified that they will utilizing the side towards the road for the elevator and stairs and that they will be utilizing the water facing side to create a new master suite and other living space.
 22. The Board found that Mr. Redden testified that the dwelling will consist of two (2) livable floors and one (1) floor of storage and the top level will be the master suite with the level below it having an extra bedroom or office space.
 23. The Board found that Mr. Redden testified that Lot 32 across the street obtained a variance.
 24. The Board found that Mr. Redden testified that only a few parcels are directly affected by their lot where others would affect more properties.
 25. The Board found that Mr. Redden testified that, earlier on, they explored multiple different options to accomplish their goal.
 26. The Board found that Mr. Redden testified that the elevator or stairs cannot be driven through so adjusting their location would eat up their entire parking on the Baltimore Street side.
 27. The Board found that Mr. Redden testified that the house is oriented to Baltimore Street creating some of this issue.
 28. The Board found that Mr. Redden testified that there is no vehicular access to the property from Andrew Street and that there will be no issue with keeping vehicles off the road.
 29. The Board found that Mr. Churchwell testified that there is 5 feet from the property line to the edge of paving of Andrew Street.
 30. The Board found that Mr. Churchwell testified that the Property has sewer but is served by a well.

31. The Board found that Mr. Churchwell testified that the Property floods, especially with the king tide.
32. The Board found that Mr. Churchwell testified that they are not trying to fill the whole lot up with the build but add the stairs and elevator and remodel elsewhere.
33. The Board found that Mr. Churchwell testified that the house across the street placed an Evergreen Home and it was too large for the lot.
34. The Board found that Mr. Churchwell testified that Lot 31 is a one (1) story home of living.
35. The Board found that Mr. Churchwell testified that they are in their 60s and are planning to live there for the remainder of their lives. He noted that the home consists of three (3) stories and carrying groceries up that many stairs is taxing.
36. The Board found that Mr. Churchwell testified that, if they were to build on the Baltimore Street side, they would lose their additional parking / garage access and it would not suit the neighborhood visually.
37. The Board found that no one appeared in support of or in opposition to the Application.
38. 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 corner lot in a flood zone consisting of less than 6,375 square feet and subject to setback requirements that leave only a small portion of the lot buildable. The Applicants seek to improve the Property with an addition and stairs that will provide them with better usage of the home as they age in place but are unable to place the home on the lot without a variance. The Board notes that the Property is in a flood zone, which requires that the first floor of the living area of the home be elevated. Part of the addition will be used for an elevator to give the Applicants better access to the living area. The Property is also a corner lot but the lot is accessed from Baltimore Street, which is the corner front yard. As such, the driveway and off-street parking areas are located in the corner front yard and in large portions of the building envelope as opposed to being in the front yard off Andrew Street. The Board finds that the Property's unique physical conditions greatly restrict the building envelope on the Property. It is, thus, clear to the Board that the lot's unique characteristics have created an unnecessary hardship and exceptional practical difficulty for the Applicants who seek to place an addition and steps 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 lot with a limited buildable envelope and the Applicants seek to place an addition and steps on the Property 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 place the addition and steps on the Property. The Board is convinced that the shape and location of these structure are also reasonable, which is confirmed when reviewing the survey provided by the Applicants. The Board notes that these structures will afford the Applicants with better access to the living areas of the existing home and will provide better storage while retaining off-street parking.
 - d. The exceptional practical difficulty and unnecessary hardship were not created by the Applicants. The Applicants did not create the lot, build the

home, place the driveway off Baltimore Street, or enact the setback requirements which have limited the building envelope of the lot. The unique characteristics of the Property are clear when reviewing the survey. The Board is convinced that the unnecessary hardship and exceptional practical difficulty were not created by the Applicants but were created the lot's unique characteristics.

- 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 structures will remain over 15 feet from Andrew Street and a large portion of the building envelope off Baltimore Street will be used for parking. In effect, the Applicants propose to flip the front yard and corner yard to allow them to build this addition. The Board received evidence of support for the Application. 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. Lastly, there is a gap of 4-5 feet from the front property line to the edge of paving of Andrew Street thereby minimize the impact of the front yard variance requests on the nearby dead-end roadway.
- f. The variances sought are the minimum variances necessary to afford relief and the variances requested represent the least modifications possible of the regulation at issue. The Applicants have demonstrated that the variances sought will allow the Applicants to place the structures on the lot. The Board is convinced that the Applicants were constrained by the unique conditions of the lot but the Applicants have created a plan that will limit unnecessary encroachments into the setback area. The Board finds that the Applicants need reasonable access to the living areas of the home while still providing adequate off-street parking and this proposal accomplishes those goals while minimizing the encroachments into the setback areas.
- 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, and Mr. John Williamson. No Board Member voted against the motion to approve the Application. Mr. Jordan Warfel did not participate in the discussion or vote on this application

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY



Jeffrey Chorman
Chair

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

Date August 15, 2022