

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: SANDRA KREIS

(Case No. 11656)

A hearing was held after due notice on October 19, 2015. The Board members present were: Mr. Dale Callaway, Mr. Jeff Hudson, Mr. John Mills, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for variances from the front yard and side yard setback requirements.

Findings of Fact

The Board found that the Applicant is seeking of a variance of 4.9 feet from the ten (10) feet side yard setback requirement for a proposed manufactured home, a variance of 16.5 feet from the thirty (30) feet front yard setback requirement for a proposed manufactured home, a variance of 25 feet from the thirty (30) feet front yard setback requirement for an existing shed, a variance of 25.1 feet from the thirty (30) feet front yard setback requirement for an existing detached garage, and a variance of 1.5 feet from the five (5) feet side yard setback requirement for an existing detached garage. This application pertains to certain real property located on the north side of Cherry Walk Drive and on the south side of David Drive, approximately 795 feet east of Camp Arrowhead Road (911 Address: 34013 Cherry Walk Drive, Lewes); said property being identified as Sussex County Tax Map Parcel Number 2-34-12.00-60.00.

1. The Board was given copies of the Application, a portion of the tax map of the area, and a survey of the Property dated August 7, 2015.
2. The Board found that the Office of Planning & Zoning received one (1) letter of concern in reference to the Application and had not received any correspondence in support of or in opposition to the Application.
3. Gil Fleming and Sandra Kreis were sworn in to testify about the Application.
4. The Board found that Mr. Fleming testified that the Applicant inherited the Property.
5. The Board found that Mr. Fleming testified that the existing manufactured home is in poor shape and needs to be replaced. The existing structures have been on the lot for approximately forty (40) years.
6. The Board found that Mr. Fleming testified that the septic system and well must be replaced. The new well will be located near the old well and the septic system takes up a large portion of the Property.
7. The Board found that Mr. Fleming testified that the Property is unique as it is a through lot and the setback requirements for a through lot would make it impossible to build a dwelling on the Property.
8. The Board found that Mr. Fleming testified that the Property cannot be developed in strict conformity with the Sussex County Zoning Code.
9. The Board found that Mr. Fleming testified that the proposed manufactured home will be within the same footprint as the existing manufactured home to keep from losing existing trees on the Property.
10. The Board found that Mr. Fleming testified that the Property is unique in size.
11. The Board found that Mr. Fleming testified that the variances will not alter the character of the neighborhood.
12. The Board found that Mr. Fleming testified that the difficulty was not created by the Applicant.

13. The Board found that Mr. Fleming testified that the variances are necessary enable reasonable use of the Property.
14. The Board found that Mr. Fleming testified that the use will not impair the development of the neighboring and adjacent properties and that the use is not detrimental to the public welfare.
15. The Board found that Mr. Fleming testified that the variances requested are the least modifications of the regulations at issue and the variances requested are the minimum variances necessary to afford relief.
16. The Board found that Mr. Fleming testified that the existing manufactured home is 12 feet wide and the new home will be 16 feet by 76 feet
17. The Board found that Ms. Kreis testified that the existing detached garage is used for storage only.
18. The Board found that Ms. Kreis testified that the existing fuel tank will be removed.
19. The Board found that Ms. Kreis testified that the existing shed and garage have been on the Property for approximately forty (40) years with no complaint.
20. The Board found that no parties appeared in support of or in opposition to the Application.
21. 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 unrebutted, 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 unique size and the through lot setback requirements. The Property borders both David Drive and Cherry Walk Drive and is, thus, subject to the Sussex County Zoning Code requirements for a through lot. The lot is narrow as it is only 80 feet deep and the setback requirements for a through lot limit the buildable area of the Property such that it would be impossible to build a dwelling of a reasonable size thereon. The limitations of the building envelope are further exacerbated by the location of the approved septic system; much of which is located in the actual building envelope. The unique characteristics of this Property limit the buildable area available to the Applicant and have created an exceptional practical difficulty for the Applicant who seeks to build a home and to retain existing structures on the lot.
 - b. Due to the uniqueness of the lot, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property has a unique size and the buildable area thereof is limited due to its size. The Applicant seeks to build a dwelling of reasonable size and to retain a reasonably sized shed and garage but is 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 a reasonably sized dwelling to be constructed and for the shed and garage to remain on the Property. The Board is convinced that the size, shape, and location of the dwelling, shed, and garage are reasonable, which is confirmed when reviewing the survey provided by the Applicant.
 - c. The exceptional practical difficulty was not created by the Applicant. The Applicant inherited the Property and did not create the unusual size of the Property. The structures have been on the Property for approximately 40 years and the existing dwelling needs to be replaced. The unique lot size has resulted in a limited building envelope on the Property and the small building envelope has created the exceptional practical difficulty. The

small building envelope was further limited by the location of the septic system. The unique characteristics of the Property are clear when reviewing the survey. The Board is convinced that the exceptional practical difficulty was not created by the Applicant but was created the lot's unique characteristics.

- d. 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 dwelling, shed, and garage will have no effect on the character of the neighborhood. The shed and garage have been in their current location for many years without complaint and the dwelling will be placed on a location substantially similar to the prior dwelling located on the Property. Furthermore, no evidence was presented which convinced the Board that the variances would somehow alter the essential character of the neighborhood or be detrimental to the public welfare.
- e. 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 Applicant has demonstrated that the variances sought will allow the Applicant to construct a reasonably sized dwelling and to retain a garage and shed on the Property.

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 Mr. Dale Callaway, Mr. Jeff Hudson, Mr. John Mills, and Mr. Brent Workman. No Board Member voted against the Motion to approve the variance application. Mr. Norman Rickard was not present and did not participate in the discussion or vote of this Application.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY


Dale Callaway
Chairman

If the use is not established within one (1)
year from the date below the application
becomes void.

Date December 15, 2015.