

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

**IN RE: WILMINGTON SAVINGS FUND SOCIETY, FSB**

**d/b/a CHRISTIANA TRUST**

**(Case No. 12354)**

A hearing was held after due notice on September 9, 2019. The Board members present were: Mr. Jeffrey Chorman, Ms. Ellen Magee, Mr. John Williamson, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for variances from the front yard setback and rear yard requirements for an existing dwelling.

Findings of Fact

The Board found that the Applicant is seeking the following variances: 1) a variance of 14.1 feet from the thirty (30) feet front yard setback requirement for the existing dwelling; 2) a variance of 16.4 feet from the thirty (30) feet front yard setback requirement for existing stairs; 3) a variance of 16.0 feet from the thirty (30) feet front yard setback requirement for 16 ft. for the existing dwelling; 4) a variance of 17.2 feet from the thirty (30) feet front yard setback requirement for the covered porch and stairs; 5) a variance of 10.0 feet from the thirty (30) feet front yard setback requirement for the existing dwelling; and 6) a variance of 0.8 feet from the twenty (20) feet rear yard setback requirement for an existing dwelling. This application pertains to certain real property on the south side of Shepherds Hollow Road approximately 503 feet east of Horsey Church Road (911 Address: 34389 Shepherds Hollow Road, Laurel), Tax Map Parcel Number 4-32-13.00-14.02. After a public hearing, the Board made the following findings of fact.

1. The Board was given copies of the Application, a survey of the Property dated June 11, 2019, a survey of the Property dated February 14, 2007, a deed to the Property, photographs, property record cards, an aerial photograph of the Property, 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 Rick Bennett was sworn in to testify about the Application. Shannon Carmean Burton, Esquire presented the Application on behalf of the Applicant.
4. The Board found that Mrs. Burton stated that the Property is unique as it was a part of a larger parcel which was improved with the dwelling in 1988. The Property was subdivided from the larger parcel in 2007 without review of the location of the existing improvements.
5. The Board found that Mrs. Burton stated that the Property cannot otherwise be developed without removing a portion of the dwelling, garage, porch and stairs which have been in the current location for over 30 years.
6. The Board found that Mrs. Burton stated that the Applicant did not construct the improvements but obtained title to the Property at a Sheriff's sale of the Property.
7. The Board found that Mrs. Burton stated that the Property is unique and it cannot be developed in strict conformity with the Code due to its uniqueness.
8. The Board found that Mrs. Burton stated that the variances are necessary to enable reasonable use of the Property.
9. The Board found that Mrs. Burton stated that the variances will not alter the character of the neighborhood as the dwelling has been in its current location for over 30 years and there have been no complaints.

10. The Board found that Mrs. Burton stated that the Applicant only learned of the encroachments when it obtained a survey as part of its process to sell the lot.
11. The Board found that Mrs. Burton stated that there have been no known complaints about the structures.
12. The Board found that Mrs. Burton stated that the original owner owns neighboring lands and variances were obtained on those lands.
13. The Board found that Mrs. Burton stated that the Applicant seeks only the minimum variances necessary to bring the Property into compliance with the Zoning Code.
14. The Board found that Mr. Bennett affirmed the statements made by Mrs. Burton as true and correct.
15. The Board found that Mr. Bennett testified that the house was built on the septic drain field and that a new well and septic system will be installed. He also noted that the lot has problems.
16. The Board found that no one appeared in support of or in opposition to the Application
17. 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 due to its historical development. The Property was developed with the house and structures in 1988 but was carved out of a larger parcel in 2007. At the time, these encroachments were not known and the Property was later sold at a sheriff's sale. The lot is a shallow lot in comparison to its width and the building envelope is unique and limited. These unique characteristics limit the buildable area available to the Applicant and have created an unnecessary hardship and exceptional practical difficulty for the Applicant who seeks to retain existing structures on the lot. The Board notes that the structures were placed on the lot by a prior owner.
  - 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 Property and situation, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property was laid out and the structures were constructed by a prior owner. The Applicant seeks to retain those structures 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 the structures to remain on the Property. The Board is convinced that the shape and location of the structures are reasonable, which is confirmed when reviewing the survey provided by the Applicant.
  - d. The unnecessary hardship and exceptional practical difficulty were not created by the Applicant. The Property has unique physical conditions, as discussed above, and those conditions have limited the building envelope on the Property and have created an exceptional practical difficulty and unnecessary hardship. Importantly, the Applicant did not develop the Property with the structures. Rather, the dwelling was placed on the Property by a prior owner.
  - 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 structures have been on the Property for many years yet there were no complaints about the structures noted in the record. Furthermore, no evidence was presented that the structures 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 Applicant has demonstrated that the variances sought will allow the Applicant to retain the structures on the lot. No additions or modifications to those structures are proposed.
- 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 Mr. Jeffrey Chorman, Ms. Ellen Magee, Mr. John Williamson, and Mr. Brent Workman. No Board Member voted against the Motion to approve the variance application. Dr. Kevin Carson did not participate in the discussion or vote on this application.

BOARD OF ADJUSTMENT  
OF SUSSEX COUNTY



Ellen M. Magee  
Chair

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

Date November 19, 2019