

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: KRYSTAL WALTMAN

(Case No. 12519)

A hearing was held after due notice on January 25, 2021. The Board members present were: Dr. Kevin Carson, Mr. Jeff Chorman, Mr. John Williamson, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for a variance from the corner front yard setback requirement and separation distance requirement for proposed structures.

Findings of Fact

The Board found that the Applicant seeks a variance of 10 feet from the fifteen (15) feet corner front yard setback requirement for a proposed manufactured home and a variance of 5 feet from the 20 feet separation distance requirement between manufactured homes in a manufactured home park from the dwelling on Lot 41. This application pertains to the proposed dwelling on Lot 47 in Simpson's Mobile Home Park. This application pertains to certain real property located on the east side of South Shore Drive Extension approximately 450 feet south of Marina View Court (911 Address: N/A); said property being identified as Sussex County Tax Map Parcel Number 1-34-2.00-4.00, 3.01 and 5.00. 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 survey of the Property dated April 6, 2018, a site plan of Simpson's Mobile Home Park, a drawing of the proposed dwelling, a letter of opposition with exhibits, photographs, letters of support, and a portion of the tax map of the area.
2. The Board found that the Office of Planning & Zoning received one letter in support of and two letters in opposition to the Application.
3. The Board found that Krystal Waltman was sworn in to give testimony about the Application.
4. The Board found that Ms. Waltman testified that she recently purchased Lot 47 and that her friends have purchased Lot 41.
5. The Board found that Ms. Waltman testified that, while she prefers a stick-built home, only a manufactured home can be placed on her lot and that variances are necessary to get the maximum space necessary to accommodate her family. She noted that she has 6 children and grandchildren.
6. The Board found that Ms. Waltman testified that there is a marsh to the side and she did not realize how high the water rises.
7. The Board found that Ms. Waltman testified that there is a shared driveway and the variances will help with visibility issues.
8. The Board found that Ms. Waltman testified that, due to the unique building restrictions prohibiting a modular or stick-built home and requiring a mobile home, space is limited.
9. The Board found that Ms. Waltman testified that the height restrictions also limit options of a second story addition.
10. The Board found that Ms. Waltman testified that marshland and wetlands prohibit a different placement of the home and the easement on the Property further limits the options for placement of a house.

11. The Board found that Ms. Waltman testified that, due to the fact that the home on Lot 41 will be located 10 feet off the property line, the separation distance requirement is difficult to adhere to with the size of the mobile home.
12. The Board found that Ms. Waltman testified that marshlands and environmental issues do not allow for placement of the home in a different location.
13. The Board found that Ms. Waltman testified that mobile homes are limited to a width of 28 feet wide.
14. The Board found that Ms. Waltman testified that their goal is to make the mobile home look great and compliment the community. She plans to add cedar shakes and metal roofing so that the home looks like a stick-built home.
15. The Board found that Ms. Waltman testified that the variances requested are the least modifications possible.
16. The Board found that Ms. Waltman testified that the HVAC unit will comply with setbacks.
17. The Board found that Ms. Waltman testified that this lot is subject to a 99-year perpetual lease.
18. The Board found that Ms. Waltman testified that the HOA said that it does not need to give approval and that landlord approval is not needed either.
19. The Board found that Kathleen Edelen was sworn in to give testimony about the Application. Ms. Edelen supports the request for the front corner variance but she has concerns about fire safety if the homes are placed too close to each other.
20. The Board found that no parties appeared in support or in opposition to the Application and that one person appeared by teleconference to testify about this Application.
21. The Board tabled the Application until February 1, 2021, at which time the Board discussed and voted on the Application.
22. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, which the Board found 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 with conditions.
 - a. The Property is unique due to its size, shape, and physical conditions. The lot is part of Simpson's Mobile Home Park and is subject to a 99-year perpetual lease. Due to the zoning classification, the lot can only be used for a manufactured home, which thereby limits the types of homes which can be placed on the lot. The lot itself is small as it consists of only 7,015 square feet and its shape is unique. A portion of the north side of the Property is used for a shared driveway with Lot 41 thereby rendering part of the lot unusable. The southeast corner of the lot is considered marshland so the actual area where a home could be placed is further limited. The adjacent Lot 41 has similar challenges due to the marsh and the home on Lot 41 is proposed to be located 10 feet from the shared property line and the Applicant's home needs to be separated from the home on Lot 41 as well. Due to these conditions, the building envelope is small and oddly shaped and the problem is exacerbated since the Applicants are limited in the type of home that can be placed on the lot. These conditions have created an unnecessary hardship and exceptional practical difficulty for the Applicant who seeks to build a dwelling on the Property as noted above.
 - 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 the situation, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Applicant seeks to construct a proposed dwelling on the lot but is unable to do so while complying with the Sussex County Zoning Code. The Board is

thus convinced that the variances are necessary to enable the reasonable use of the Property as the variances will allow the Applicant to construct the dwelling on the lot. The Board is convinced that the size, shape, and location of the dwelling are reasonable.

- d. The unnecessary hardship and exceptional practical difficulty were not created by the Applicant. As discussed above, the Property has unique conditions which have limited the Applicant's ability to reasonably develop the Property. The Applicant did not create the unique conditions of the lot as she only recently acquired the lot. The Board was convinced that the Applicant has not created the exceptional practical difficulty and unnecessary hardship. Furthermore, the Board is convinced that the Applicant did not come to the Property with an illegal use in mind. Rather, the Applicant is limited by the physical conditions of the Property and she needs the variance in order to reasonably develop the Property as proposed.
- 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 variances will have no effect on the character of the neighborhood. The variances will allow the Applicant to place a reasonably sized manufactured home as proposed. One neighbor presented concerns about fire safety but the neighbor most affected by the separation distance variance request supports the Application. The Board notes that it received a letter of objection from Blaine T. Phillips, Jr., but Mr. Phillips objected on basis that there was a title issue with the property. The Board, however, is not the proper body to address title issues and the Board cannot offer Mr. Phillips the relief he appears to seek. The opposition presented no substantial evidence which demonstrated that the variances 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 place a reasonably sized home on the Property. The Board finds that the Applicant took reasonable measures to otherwise limit encroachments into the setback area but was constrained by the Property's unique conditions.
- 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.
- h. The Board's approval is subject to the following conditions:
 - i. The Applicant must submit to the Office of Planning & Zoning a letter of no objection from the homeowners' association.

The Board granted the variance application with conditions 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 with conditions. The Board Members in favor were Dr. Kevin Carson, Mr. Jeffrey Chorman, Mr. John Williamson, and Mr. Brent Workman. No Board Member voted against the motion to approve Application with conditions. Mr. Travis Hastings did not participate in the discussion or vote on this 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 April 12, 2021