

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

**IN RE: KURT FAMILY LIMITED PARTNERSHIP**

**(Case No. 12548)**

A public hearing was held after due notice on May 3, 2021. The Board members present were: Dr. Kevin Carson, Mr. Jeff Chorman, Mr. John T. Hastings, Mr. John Williamson, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for variances from the front yard setback requirement for proposed and existing structures.

Findings of Fact

The Board found that the Applicant is requesting a variance of 4 feet from the thirty (30) feet front yard setback requirement for proposed steps and a variance of 8.5 feet from the thirty (30) feet front yard setback requirement for an existing dwelling. This application pertains to certain real located on the west side of Garfield Avenue within the Edgewater Acres Subdivision (911 Address: 39179 Garfield Avenue, Selbyville); said property being identified as Sussex County Tax Map Parcel Number 5-33-20.18-185.00. 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 February 21, 2021, a survey of the Property dated March 30, 2021, emails 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 two letters in support of the Application and no correspondence in opposition the Application.
3. The Board found that James Webster was sworn in to give testimony about the Application.
4. The Board found that Mr. Webster testified that the Applicant proposes to lift an existing house on pilings above the floodplain. According to Mr. Webster, the existing house was built in 1965 and is only 15 feet from Garfield Avenue. The new house, however, will be located 21.5 feet from Garfield Avenue to make it more in compliance with the Code.
5. The Board found that Mr. Webster testified that the house could not be moved back 30 feet as it is a small lot and would block the neighbor's view of the water.
6. The Board found that Mr. Webster testified that the neighbors support the request.
7. The Board found that Mr. Webster testified that there are currently parking problems on the lot and this proposal will alleviate those problems as there will be room to park 4 cars underneath the house.
8. The Board found that Mr. Webster testified that the house meets the side yard setback requirements.
9. The Board found that Mr. Webster testified that the rear of the dwelling will line up to the rear of the dwelling on the neighboring lot.
10. The Board found that Mr. Webster testified that there are other dwellings in the neighborhood which are also on pilings.
11. The Board found that Mr. Webster testified that there will be no addition to the house except for a deck which will be in the rear.
12. The Board found that Mr. Webster testified that, if the house was moved back 4 feet, it would block his neighbor's view.

13. The Board found that Mr. Webster testified that this will not create any visibility issues on Garfield Avenue.
14. The Board found that Mr. Webster testified that the property flooded during Hurricane Sandy.
15. The Board found that Mary Kurt-Mason was sworn in by teleconference to give testimony about the Application.
16. The Board found that Ms. Kurt-Mason testified that this is a family home owned by her father, herself, and four sisters and that they have owned this small house since 1965 and used it as a family gathering spot.
17. The Board found that Ms. Kurt-Mason testified that the house was grandfathered in with a setback of 15 feet but, because of the flooding, the house has to be elevated.
18. The Board found that Ms. Kurt-Mason testified that the house will be placed farther back on the lot but, if the variance is approved, the proposed placement will not block the neighbor's view.
19. The Board found that one person appeared in support of and no one appeared in opposition to the Application.
20. 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 in size, shape, and development. The lot consists of only 6,002 square feet and is developed by a house, decks, and steps. The Property is also unique as it is adjacent to the Big Assawoman Bay and is subject to flooding. The house was built in 1965 and is located 15 feet from Garfield Avenue but the Applicant needs to elevate the home above the floodplain. In doing so, the Applicant proposes to move the home farther back from Garfield Avenue but the Applicant will still not be able to meet the rear yard setback requirement due to the unique conditions of the lot. These unique characteristics of this Property limit the buildable area available to the Applicant and have created an exceptional practical difficulty and unnecessary hardship for the Applicant who seeks to elevate the existing structures and to build a set of steps and deck 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 has a unique size, shape, and development and the buildable area thereof is limited due to these conditions. The Applicant seeks to elevate the existing structures and to build a set of steps and deck on the lot but is unable to do so without violating the Sussex County Zoning Code. The Board is convinced that front yard variances are necessary to enable the reasonable use of the Property as the variances will allow the Applicant to elevate the existing structures and to build a set of steps and deck on the lot. The house needs to be elevated above the floodplain as the Property flooded during Hurricane Sandy and the steps and deck will provide access to the elevated home.
  - d. The exceptional practical difficulty and unnecessary hardship were not created by the Applicant. The Applicant did not create the unusual conditions of the Property. The lot is a small lot which is susceptible to flooding and was developed prior to the enactment of the Sussex County Zoning Code. The home needs to be elevated above the floodplain and the Applicant is unable to elevate it without violating the Code. The Board notes that the Applicant is reducing the degree of non-conforming by relocating

the home approximately 6.5 feet farther from Garfield Avenue even though such relocation places the home closer to the Big Assawoman Bay. The unique physical conditions of the lot have resulted in a limited building envelope on the Property and the small building envelope has created the exceptional practical difficulty and unnecessary hardship. The unique characteristics of the Property are clear when reviewing the survey. The Board is convinced that the exceptional practical difficulty and unnecessary hardship were not created by the Applicant but was created by the lot's unique characteristics, flood zone requirements, and the development prior to the enactment of the Sussex County Zoning Code.

- 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 elevate the existing structures and to build a set of steps and deck on the lot. The existing structures have been on the Property for some time with no complaints noted in the record. The home will be relocated farther from Garfield Avenue so visibility along Garfield Avenue should improve. The proposed development will also afford the Applicant with additional parking spaces on the lot. The Board notes that the Applicant has been mindful of its neighbors' water views and the neighbors support the request. There was no evidence 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 elevate the existing structures and to build a set of steps and deck on the lot. The flooding of the Property and the proximity to Big Assawoman Bay have created a difficulty for the Applicant to develop the Property closer to the rear yard setback line and, while the Applicant has pushed the proposed dwelling closer to the rear yard, it does not meet the front yard setback requirements. The Board finds that the Applicant has minimized the size of the variance while elevating and relocating the existing, modest-sized home.
- 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. John Williamson, and Mr. Brent Workman. No Board Member voted against the motion to approve Application.

ADJUSTMENT

BOARD OF

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 July 12, 2021