

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: ROBERT CATHELL

(Case No. 12638)

A public hearing was held after due notice on December 20, 2021. The Board members present were: Dr. Kevin Carson, Mr. Jeff Chorman, Mr. John T. Hastings, Mr. Jordan Warfel, and Mr. John Williamson.

Nature of the Proceedings

This is an application for a variance from the front yard setback requirement for a proposed dwelling.

Findings of Fact

The Board found that the Applicant is requesting a variance of 5 feet from the thirty (30) feet front yard setback requirement for a proposed dwelling. This application pertains to certain real located on the west side of Walnut Lane within the Keenwick Subdivision (911 Address: 38340 Walnut Lane, Selbyville); said property being identified as Sussex County Tax Map Parcel Number 533-19.12-97.00 ("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 drawing of the Property, a survey of the Property dated September 30, 2021, drawings of the proposed dwelling, letters supporting 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 to the Application.
3. The Board found that Robert Cathell was sworn in to give testimony about the Application. Mr. Cathell submitted exhibits to the Board to review.
4. The Board found that Mr. Cathell testified that this will be his retirement home and that he would like to move the dwelling away from the canal.
5. The Board found that Mr. Cathell testified that the dwelling will comply with the homeowner association front yard setback of 25 feet.
6. The Board found that Mr. Cathell testified that there is flooding on the Property and he intends to grade the Property to help with drainage.
7. The Board found that Mr. Cathell testified that the dwelling must meet FEMA flood zone requirements and will be elevated to meet FEMA requirements.
8. The Board found that Mr. Cathell testified that he intends to install a pool to the rear of the lot in the future.
9. The Board found that Mr. Cathell testified that the existing house is cheaper to rebuild than to renovate.
10. The Board found that Mr. Cathell testified that the Property is served by public water and sewer but there is a well on the Property that he would like to maintain for future irrigation use.
11. The Board found that Mr. Cathell testified that the neighbor has a 20 foot rear yard setback.
12. The Board found that Mr. Cathell testified that the existing shed adheres to the setbacks but may have to be moved if the variance is not granted.
13. The Board found that Mr. Cathell testified that he has support from some neighbors.
14. The Board found that Mr. Cathell testified that the HVAC will be on the left side of the house and will be elevated. He noted that the HVAC will comply with the setback requirements.

15. The Board found that Mr. Cathell testified that the only steps will be off the front and rear and will comply with the setback requirements.
16. The Board found that Mr. Cathell testified that the house will be his retirement house and that he is designing the house with handicap accessible doors so that he can age in place.
17. The Board found that Mr. Cathell testified that the lot slopes up to the middle and then slopes down towards the canal.
18. The Board found that Mr. Cathell testified that the house will consist of 2,300 square feet and will be a one story house. He also noted that the house will measure 53 feet wide and the prior house was 48 feet wide.
19. The Board found that Mr. Cathell testified that there is approximately 15 feet from the edge of paving of the road to the front property line and that the house will be 40 feet from the paved road.
20. The Board found that no one 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 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 the size and shape of the lot and flooding of the lot. The Property consists of 10,724 square feet but a portion of the rear yard is susceptible to flooding and is also used as a setback for a tie line. The pictures and testimony from the Applicant demonstrate that the rear yard floods at times and that it is advisable to construct the dwelling farther away from the canal to the rear of the lot. The unique conditions of the lot have created an unnecessary hardship and exceptional practical difficulty for the Applicant who seeks to construct a reasonably sized dwelling 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 Property and the situation, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Applicant seeks to construct a reasonably sized 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 variance is necessary to enable the reasonable use of the Property as the variance will allow the Applicant to construct the reasonably sized home on the lot. The Board is convinced that the size, shape, and location of the house 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. 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 the Applicant needs the variance in order to construct a reasonable dwelling on the lot.
 - e. The variance 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 variance will have no effect on the character of the neighborhood. The variance will allow the Applicant to construct a

reasonably sized home. The Board finds that no substantial evidence was presented which convinced the Board that the variance would somehow alter the essential character of the neighborhood or be detrimental to the public welfare. The Board notes that there was substantial support in the record from neighbors for the request. The Board also notes that the front property line does not match the edge of paving of Walnut Lane so the front yard appears larger than it actually is. As a result, the encroachment of the dwelling into the front yard setback will not be as noticeable. The impact on visibility on traffic should thus be minimal.

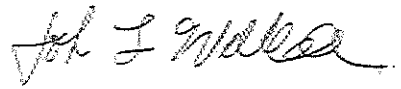
- f. The variance sought is the minimum variance necessary to afford relief and the variance requested represents the least modification possible of the regulation at issue. The Applicant has demonstrated that the variance sought will allow the Applicant to construct the dwelling on the Property. The dwelling is a modest size and will comply with the restrictive covenants. The Board notes that most of the dwelling will comply with the setback requirement as will the steps from the dwelling.
- 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. Jeff Chorman, Mr. Travis Hastings, Mr. Jordan Warfel, and Mr. John Williamson. No Board Member voted against the motion to approve the 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 February 21 2022.