

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: CANDICE WINDSOR N/K/A CANDICE KINSLER &

CHRISTOPHER KINSLER

(Case No. 12665)

A hearing was held after due notice on March 7, 2022. The Board members present were: Dr. Kevin Carson, Mr. Travis Hastings, Mr. Jordan Warfel, and Mr. John Williamson.

Nature of the Proceedings

This is an application for a variance from the corner front yard setback requirement for renovations to an existing structure.

Findings of Fact

The Board found that the Applicants are requesting a variance of 2.3 feet from the fifteen (15) feet corner front yard setback requirement from Robin Hood's Loop for renovations to an existing carport. This application pertains to certain real property located at the intersection of Robin Hood's Loop and Maid Marions Retreat Court within the Sherwood Forest North Subdivision (911 Address: 32172 Robin Hood's Loop, Millsboro); said property being identified as Sussex County Tax Map Parcel Number 234-23.00-498.00 ("the Property"). 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 building permit application, a survey of the Property dated June 23, 2017, photographs, 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 Candice Kinsler and Christopher Kinsler were sworn in to give testimony about the Application.
4. The Board found that Ms. Kinsler testified that the Applicants propose to enclose an existing carport by adding three walls to the carport. The Applicants intend to use the carport as an office and for additional storage.
5. The Board found that Ms. Kinsler testified that the Property is unique and that the Property is a corner lot.
6. The Board found that Ms. Kinsler testified that the Applicants purchased the Property "as is" in 2017 and the carport was on the Property when they acquired the lot.
7. The Board found that Ms. Kinsler testified that the Applicants are expanding their family unexpectedly. She noted that their spare bedroom is currently used as a home office but needs to be converted to a nursery.
8. The Board found that Ms. Kinsler testified that she works from home primarily due to Covid-19 and due to her difficulties with her pregnancy.
9. The Board found that Ms. Kinsler testified that the front yard is unbuildable due to the existing trees and that the homeowner association requires approval before removing trees more than 6 inches in diameter.
10. The Board found that Ms. Kinsler testified that the Property is served by a septic system.
11. The Board found that Ms. Kinsler testified that the carport, if enclosed, will not negatively impair visibility on the adjacent roads.

12. The Board found that Ms. Kinsler testified that there is a drainage ditch located on land owned by the homeowners association between the property line and the edge of paving of Robin Hood's Loop and that the ditch is approximately 5-6 feet wide. She estimates that the carport would be about 15 feet from the edge of Robin Hood's Loop.
13. The Board found that Ms. Kinsler testified that enclosing the carport will not affect their ability to park on the Property.
14. The Board found that Mr. Kinsler testified that the septic system is located near the deck and that, due to the septic placement, the Applicants cannot add onto the rear of their home.
15. The Board found that Mr. Kinsler testified that the Applicants are trying to accommodate their needs within the buildable area but the home does not have a basement or any additional storage area outside of a shed and the attic which is small.
16. The Board found that Mr. Kinsler testified that the Applicants have received verbal support of their neighbors.
17. The Board found that Mr. Kinsler testified that his wife is pregnant and they have an eight (8) year old daughter also.
18. The Board found that no one appeared in support of or in opposition to the Application.
19. 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 as it is an oddly shaped corner lot improved by a septic system and burdened by homeowner restrictions regarding tree removal. The Property was developed with a house and carport by a prior owner and the Applicants need to enclose an existing carport to provide additional room for their growing family but cannot build an addition to the home due the location of the septic system and trees. The Lot has curved lot lines on the front and corner front which create an oddly shaped building envelope that is further limited by the trees and septic system. The Property's unique conditions have thus created an unnecessary hardship and exceptional practical difficulty for the Applicants who seek to enclose an existing carport.
 - 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 Applicants seek to enclose an existing carport but are 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 Applicants to enclose the existing carport on the lot. The Board is convinced that the size, shape, and location of the carport is reasonable. The Board notes that the Applicants have little storage space in the home and need to build an addition to the home to accommodate a home office and storage for their growing family.
 - d. The unnecessary hardship and exceptional practical difficulty were not created by the Applicants. As discussed above, the Property has unique conditions which have limited the Applicants' ability to reasonably develop the Property. The Applicants did not create the unique conditions of the lot. The Applicants did not create the lot, build the house, or place the septic system or carport on the Property. The Board was convinced that the

Applicants have not created the exceptional practical difficulty and unnecessary hardship. Furthermore, the Board is convinced that the Applicants did not come to the Property with an illegal use in mind. Rather, the Applicants are limited by the physical conditions of the Property and the Applicants need the variances in order to reasonably develop the Property as proposed. The Board notes that the carport already exists on the Property and the proposed renovation will not enlarge the carport.

- 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 Applicants to renovate the existing carport. The carport has been on the Property for approximately 20 years and there were no complaints about the location of the structure. Likewise, there was no objection in the record to the proposed renovation and no evidence was presented which demonstrate that the variance would somehow alter the essential character of the neighborhood or be detrimental to the public welfare. The Board also notes that there is a gap between the edge of paving of Robin Hood's Loop and the corner front property line so the encroachment should not be as noticeable as it would be otherwise.
- 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 Applicants have demonstrated that the variance sought will allow the Applicants to enclose the carport. The carport will not encroach farther into the setback area than it already exists. The Board is also convinced that the Applicants explored other options such as adding an addition to the home but were constrained by the existing conditions of the lot.
- 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. Travis Hastings, Mr. John Williamson, and Mr. John Williamson. No Board Member voted against the motion to approve Application. Mr. Jeffrey Chorman 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 May 2, 2022