

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: KATHY HARRIS

(Case No. 12686)

A public hearing was held after due notice on June 6, 2022. The Board members present were: 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 structure.

Findings of Fact

The Board found that the Applicant is requesting a variance of 9.9 feet from the forty (40) feet front yard setback requirement for a proposed dwelling. This application pertains to certain real property located on the corner of Sandy Cove Road and Pine Crest Drive within the Pine Crest Terrace Subdivision (911 Address: 30102 Pinecrest Drive, Ocean View); said property being identified as Sussex County Tax Map Parcel Number 134-9.00-136.00 ("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 survey of the Property dated April 5, 2022, a survey of the Property dated March 7, 2022, a letter from Bradley Absher, 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 Kathy Harris was sworn in to give testimony about the Application.
4. The Board found that Ms. Harris testified that Sussex County has determined that Sandy Cove Road is considered the front yard and that Pinecrest Drive is considered the corner front yard.
5. The Board found that Ms. Harris testified that the Property is 107 feet deep but the setbacks restrict the buildable area such that only 37% of the Property can be developed.
6. The Board found that Ms. Harris testified that she proposes to place a manufactured home on the Property that measures 24 feet by 70 feet and the home will encroach into the front yard setback area even though she has tried to offset the placement as much as possible.
7. The Board found that Ms. Harris testified that there is no way to move the unit or orient it differently to avoid the need for the variance.
8. The Board found that Ms. Harris testified that the proposed structure will only extend 4 feet beyond an existing block wall.
9. The Board found that Ms. Harris testified that there are other homes to the east along Sandy Cove Road that are closer to the road than her proposed home and she does not believe that the proposed structure would alter the character of the neighborhood or affect adjacent properties.
10. The Board found that Ms. Harris testified that she has determined placement of the structure to minimize the need for a variance to only one side of the property.
11. The Board found that Ms. Harris testified that the Property is serviced by sewer and water from Sussex Shores and there is no homeowners association.

12. The Board found that Ms. Harris testified that her neighbors support the request and excited for her.
13. The Board found that Ms. Harris testified that the April 5, 2022, site plan showing the steps to the rear of the Property is the correct plan showing the proposal.
14. The Board found that Ms. Harris testified that the deck and steps will be uncovered and that all other structures related to the house, such as the HVAC system, will comply with setback requirements.
15. The Board found that Ms. Harris testified that there is about a 4 to 5 foot gap between her property line and the edge of paving of Sandy Cove Road.
16. The Board found that two people appeared in support of and no one appeared 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 as it is a small corner lot consisting of less than 6,000 square feet and is subject to setback requirements that leave only a small portion of the lot buildable. The Applicant seeks to improve the Property with a manufactured home but is unable to place the home on the lot without a variance. The Board finds that the Property's unique physical conditions greatly restrict the building envelope on the Property. It is, thus, clear to the Board that the lot's unique characteristics have created an unnecessary hardship and exceptional practical difficulty for the Applicant who seeks to place a manufactured home 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 is a small lot with a limited buildable envelope and the Applicant seeks to place a reasonably sized manufactured home on the Property but is unable to do so without violating the Sussex County Zoning Code. The Board is convinced that the variance is necessary to enable the reasonable use of the Property as the variance will allow the Applicant to place the manufactured home on the Property. The Board is convinced that the shape and location of this home are also reasonable, which is confirmed when reviewing the survey provided by the Applicant.
 - d. The exceptional practical difficulty and unnecessary hardship were not created by the Applicant. The Applicant did not create the lot or enact the setback requirements which have limited the building envelope of the lot. The unique characteristics of the Property are clear when reviewing the survey. The Board is convinced that the unnecessary hardship and exceptional practical difficulty were not created by the Applicant but were created the lot's unique characteristics.
 - 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 manufactured home will have no effect on the character of the neighborhood. The manufactured home will be located a similar distance from the front property line as the other homes in the area and there were no complaints in the record about the proposal. Rather, the Board received evidence of support for the Application. Furthermore, no evidence was presented which would indicate that the variance would somehow alter the essential character of the neighborhood or be

detrimental to the public welfare. Lastly, there is a gap of 4-5 feet from the front property line to the edge of paving of Sandy Cove Road thereby minimizing the impact of the front yard variance request on the nearby roadway.

- 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 place the manufactured home on the lot. The Board is convinced that the Applicant was constrained by the unique conditions of the lot but the Applicant has created a plan that will limit unnecessary encroachments into the setback area. Notably, the other structures related to the home will comply with the setback requirements.
- 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, Mr. Travis Hastings, Mr. Jordan Warfel, and Mr. John Williamson. No Board Member voted against the motion to approve the Application. Dr. Kevin Carson did not participate in the discussion or vote on this application

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY



Jeffrey Chorman
Chair

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

Date August 1, 2022