

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

**IN RE: CATHY HARRIS**

**(Case No. 12698)**

A 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 variances from the side yard setback requirement for proposed structure.

Findings of Fact

The Board found that the Applicant is requesting the following variances:

1. A variance of 8.2 feet from the ten (10) feet side yard setback requirement on the south side for an existing dwelling; and
2. A variance of 1.2 feet from the ten (10) feet side yard setback requirement on the south side for an existing dwelling

This property is located on the southwest side of Pondview Drive within the Red Mill Manor Subdivision (911 Address: 31274 Pondview Drive, Lewes) said property being identified as Sussex County Tax Map Parcel Number 235-23.00-12.00 ("the Property"). After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a survey of the Property dated May 24, 2001, an aerial photograph of the Property, 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 Cathy Harris was sworn in to testify about the Application.
4. The Board found that Ms. Harris testified that the right rear corner of the home is very close to the property line and needs a variance.
5. The Board found that Ms. Harris testified that the structure was originally built in or around 1945 and an addition was constructed in 1984 which created the issue at hand.
6. The Board found that Ms. Harris testified that the Property was purchased by her friend in 2001 but the friend passed away in 2002 and she left the Property to the Applicant. Ms. Harris noted that she is considering selling the Property but needs the variance in order to do so.
7. The Board found that Ms. Harris testified that the condition has existed on the Property since 1984 and predates her ownership of the Property.
8. The Board found that Ms. Harris testified that they have no plans for the development of the Property.
9. The Board found that Ms. Harris testified that the neighborhood is not affected by the closeness of the dwelling to the property line.
10. The Board found that Ms. Harris testified that they have been renovating the home for the past several years.
11. The Board found that Ms. Harris testified that the home was originally a fishing cabin.
12. The Board found that Ms. Harris testified that, based on the lot lines, the house would always be too close to the property line.
13. The Board found that Ms. Harris testified that the neighbors have no complaints about the home being there.

14. The Board found that Ms. Harris testified that the addition in 1984 has created the issue at hand but the home was too close to the property line prior to the addition being constructed.
15. The Board found that Ms. Harris testified that the pump house on the survey has since been moved.
16. The Board found that Ms. Harris testified that the Property has well and septic and the well is in the rear yard and the septic is in the front yard. She noted that both systems are within the building envelope.
17. The Board found that Ms. Harris testified that there is a bulkhead at the rear of the Property and that there is a 4 foot drop down at the rear of the Property.
18. The Board found that one person appeared in support of and no one appeared 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 un rebutted, the Board determined that the application for the variances met the standards for granting a variance. The findings below further support the Board's decision to approve the Application for the variances.
  - a. The Property is unique as it is a narrow lot bordering Red Mill Pond and has a significant slope in the rear yard. The Property was developed by a house prior to the enactment of the Sussex County Zoning Code and the house encroaches into the setback area. An addition to the house was also constructed by a prior owner and that addition also encroaches into the setback area. While the Property has a limited building envelope due to the unique conditions of the lot, the Property is further constrained by the location of a well and septic system which are also located in the building envelope. The Board finds that the lot's unique conditions have created an unnecessary hardship and exceptional practical difficulty for the Applicant who seeks to retain a 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 lot, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property has a unique and limited buildable area. The Applicant seeks to retain a dwelling but is unable to do so without violating the Sussex County Zoning Code. The Board is convinced that the variances are necessary to enable the reasonable use of the Property as the variances will allow a reasonably sized dwelling to remain on the Property. The Board is convinced that the shape and location of the dwelling are also reasonable, which is confirmed when reviewing the survey provided by the Applicant. The dwelling has been in its present location for many years without complaint.
  - d. The unnecessary hardship and exceptional practical difficulty were not created by the Applicant. As previously stated, the Property has unique conditions and these conditions have resulted in a limited building envelope on the Property. These conditions have created the unnecessary hardship and exceptional practical difficulty. The Board also notes that the existing dwelling has been on the Property since 1945 and the addition has been on the Property since 1984. Both of those structures were placed by prior owners. The Applicant had no involvement in the development of the lot by the placement of those structures.
  - 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 dwelling will have no effect on the character of the neighborhood. The dwelling has been on the lot since approximately 1945

and the addition has been on the lot since 1984. No complaints about the structure was noted in the record and the Board notes that the home is angled such that only a corner of the dwelling encroaches into the setback area. The Board notes that there was no evidence submitted into the record that the dwelling has had or will somehow alter the essential character of the neighborhood. The lack of evidence is telling since the dwelling has been in its present location for many years.

- f. The variances are the minimum variances necessary to afford relief and the variances represent the least modifications possible of the regulations at issue. The Applicant has demonstrated that the variances will allow the Applicant to retain the dwelling on the Property. No additions or modifications to the dwelling are proposed.
- 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 of the Motion to approve the variance were Mr. Jeffrey Chorman, Mr. Travis Hastings, Mr. Jordan Warfel, and Mr. John Williamson. No Board Member voted against the Motion to approve the variance 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.