

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: JOHN E. KENNEDY & LUCIA C. KENNEDY

(Case No. 12721)

A hearing was held after due notice on July 18, 2022. The Board members present were: Dr. Kevin Carson, Mr. Jeffrey 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 side yard setback requirement for an existing dwelling.

Findings of Fact

The Board found that the Applicants are requesting a variance of 1.6 feet from the ten (10) feet side yard setback requirement on the northwest side for an existing manufactured home. This property is located on the northeast side of Circle Drive within the Orchard Manor Subdivision (911 Address: 32960 Circle Drive, Millsboro) said property being identified as Sussex County Tax Map Parcel Number 234-34.08-125.00 ("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, 2022, 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 John Kennedy and Lucia Kennedy were sworn in to testify about the Application.
4. The Board found that Mr. Kennedy testified that the Applicants purchased the Property on May 12, 2022, and that, on the day prior to closing, they were notified that the survey revealed a setback violation on the northwest side. He noted that the dwelling should be 10 feet off the property line on each side but the dwelling was 8.4 feet, rather than 10 feet, on the northwest side.
5. The Board found that Mr. Kennedy testified that the options he was given was to forfeit the purchase and lose the money he had invested so far or to continue and seek relief through the variance application. He also noted that they considered moving the home into compliance but the home was placed on the lot in 1979 and moving the home was not viable or cost-effective.
6. The Board found that Mr. Kennedy testified that the home is directly connected to sewer.
7. The Board found that Mr. Kennedy testified that the home has continuously and openly been in place on the Property for (43) years and that no one has ever questioned or complained about the setbacks.
8. The Board found that Mr. Kennedy testified that he has spoken with several neighbors who have no issues with the placement of the home.
9. The Board found that Mr. Kennedy testified that the person from whom he purchased the Property inherited it from her father and had limited information on the Property except that the Property had been vacant for three (3) years and, prior to that, it was rented to a drug addict which was apparent to the Applicant by the state of the home.
10. The Board found that Mr. Kennedy testified that the HVAC system and propane tank are located at the rear of the house.
11. The Board found that Mr. Kennedy testified that the property to the rear is owned by Charlie Clark and Mr. Clark has no plans to ever develop those lands.

12. The Board found that Mr. Kennedy testified that the Property is not located in a community with a homeowners association.
13. The Board found that one (1) person appeared in support of and no one appeared in opposition to the Application.
14. 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 variance met the standards for granting a variance. The findings below further support the Board's decision to approve the Application for the variance.
 - a. The Property is unique as due to its size and history. The lot is a rectangularly shaped lot that consists of just over 10,000 square feet. If the lot was 67 square feet smaller, it would qualify for relief under the Small Lot Ordinance. The size of the lot has created a limited building envelope. The Property also has a unique history as it is improved by a manufactured home that has been on the Property since 1979 and cannot easily be moved into compliance due to the age of the home. The Board finds that the lot's unique conditions have created an unnecessary hardship and exceptional practical difficulty for the Applicants who seek 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 Applicants seek to retain a dwelling but are 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 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 Applicants. 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 Applicants. 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 1979 and was placed by a prior owner. The Applicants had no involvement in the development of the lot by the placement of the structure.
 - 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 dwelling will have no effect on the character of the neighborhood. The dwelling has been on the lot in its present location since approximately 1979. No complaints about the structure were noted in the record. 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 variance is the minimum variance necessary to afford relief and the variance represents the least modification possible of the regulation at issue. The Applicants have demonstrated that the variance will allow the Applicants 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 Dr. Kevin Carson, 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.

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 September 12, 2022.