

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

**IN RE: KRISTI SMITH**

**(Case No. 12731)**

A public hearing was held after due notice on September 12, 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 variances from the front yard setback requirements for existing and proposed structures.

Findings of Fact

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

1. Variances of 1 foot from the thirty (30) feet front yard setback requirement for proposed bay windows;
2. A variance of 0.2 feet from the thirty (30) feet front yard setback requirement for the existing dwelling; and
3. A variance of 3.4 feet from the thirty (30) feet front yard setback requirement for the proposed landing and steps.

This application pertains to certain real property located on the corner of Greener Trail Lane and John J. Williams Highway (911 Address: 34141 Greener Trail Lane, Lewes); said property being identified as Sussex County Tax Map Parcel Number 334-18.00-39.00 ("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, an email in support of the Application, a site plan of the Property dated May 31, 2022, and a portion of the tax map of the area.
2. The Board found that the Office of Planning & Zoning received one (1) letter in support of the Application and no correspondence in opposition to the Application.
3. The Board found that Freddy Bada and Kristi Smith were sworn in to give testimony about the Application.
4. The Board found that Mr. Bada testified that the Property has been in the Applicant's family for forty (40) years and the family is aging and expanding. He noted that the Property has been used by the Applicant's family as a family and the Applicant intends to keep it that way but, as the families expand, the need for space becomes greater.
5. The Board found that Mr. Bada testified that part of the variance requested is for a bump out in the living room area and that the existing fireplace already projects into the setback.
6. The Board found that Mr. Bada testified that the other variance request is for a larger covered deck on the front of the dwelling to assist with aging family members and entering the dwelling. He noted that the existing deck is uncovered but the new stoop will be larger to provide safer access to the home.
7. The Board found that Mr. Bada testified that there are issues with the Property creating the uniqueness such as the orientation of the house, the layout of the



dwelling, and the wetlands. He noted that the wetlands and bedrooms to the rear of the dwelling limit their ability to construct anything off the rear of the home.

8. The Board found that Mr. Bada testified that most of the lot consists of wetlands and the wetlands line is close to the rear of the house.
9. The Board found that Mr. Bada testified that the Applicant did not create this problem as the house has been there for quite some time.
10. The Board found that Mr. Bada testified that the character of the neighborhood will not be impacted as there are three (3) properties accessed off Greener Trail Lane.
11. The Board found that Mr. Bada testified that the Applicant is requesting the minimum variances necessary.
12. The Board found that Mr. Bada testified that the foundation will be extended to create a larger living room.
13. The Board found that Mr. Bada testified that Greener Trail Lane is a gravel, dead-end road and the two (2) other properties are owned by the same individuals. He noted there is minimal traffic on Greener Trail Lane and that there is no access from the subdivision to the rear of the entryway.
14. The Board found that Mr. Bada testified that the road does not come to the front property line and that there is a gap between the front property line and the edge of gravel of Greener Trail Lane so the front yard appears larger. He noted that Greener Trail Lane is approximately 14 feet wide.
15. The Board found that Mr. Bada testified that there have been no complaints about the location of the house.
16. The Board found that Ms. Smith testified that her father passed away five (5) years ago and her mother, who is 83 years old, owned the house by herself but it became too much for her mother to handle. The Applicant wanted to keep the Property within the family because the house holds many memories for the family.
17. The Board found that Ms. Smith testified that she and her three (3) siblings all have children.
18. The Board found that Ms. Smith testified that the agreement of her siblings was that she would purchase the house and that everyone maintained their right to use it.
19. The Board found that Ms. Smith testified that they are trying to make the home more conducive to everyone being in the home at the same time.
20. The Board found that Ms. Smith testified that the entranceway has 4-5 steps and they would like to flatten that out for her mother to be able to enter the house and the rest of them as they age.
21. The Board found that Ms. Smith testified that the neighbors to the rear of the Property are supportive and wrote in favor of the Application.
22. The Board found that Kathy Mitchell, who is the Applicant's sister, was sworn in to give testimony in support of the Application.
23. The Board found that Ms. Mitchell testified that the Property has been in their family for forty (40) years and their family is expanding as she has two (2) children and four (4) grandchildren and the Applicant is going to be a grandmother very shortly as well.
24. The Board found that Ms. Mitchell testified that this extra space is needed to allow their families the spend the holidays together and that the family enjoys being able to spend family time together.
25. The Board found that one person appeared in support of and no one appeared in opposition to the Application.
26. 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 its size, shape, development, and topography. The Property is a large and unusually shaped lot consisting of



3.3 acres, more or less. A large part of the Property, however, is considered wetlands. As a result, the building envelope is greatly limited. The Applicant, who only recently acquired the Property, intends to construct a minor addition and to improve the access to the home by enlarging the front stoop and enclosing it so that elderly family members can more easily access the home. The house was placed on the lot by a prior owner and the Applicant is limited in where those improvements can be made due to the existing development of the lot and the wetlands. The unique characteristics of this Property have created a limited building envelope and have created an unnecessary hardship and exceptional practical difficulty for the Applicant who seeks to retain the existing house and to make reasonable improvements to the home.

- 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 unique physical characteristics and the buildable area thereof is limited due to those characteristics. The Applicant seeks to retain a home and to construct reasonable improvements on the lot 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 this reasonably sized home to remain on the lot and for reasonable improvements to be made thereto. The Board is convinced that the shape and location of these structures are also reasonable, which is confirmed when reviewing the survey provided by the Applicant.
- 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.
- 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 structures will have no effect on the character of the neighborhood. No substantial evidence that the structures would somehow alter the essential character of the neighborhood was presented to the Board. The home has been on the lot for many years and encroaches less than 1 foot into the setback area. It is doubtful that its encroachment is even noticeable. There have been no complaints about the location of the house and steps and neighbors have indicated support for the Application. The Board also notes that Greener Trail Lane is a gravel road measuring 14 feet wide and there is a large gap from the front property line to the edge of Greener Trail Lane. As a result, the encroachments into the front yard setback area are likely not as noticeable as they would otherwise be if the road went to the property line. Greener Trail Lane is also lightly used due to the fact that it is a dead-end road used by limited properties.
- f. The variances sought are the minimum variances necessary to afford relief and the variances requested represent the least modifications possible of the regulation at issue. The Applicant has demonstrated that the variances sought will allow the Applicant to retain the reasonably sized home and to make reasonable improvements on the Property. The Board is convinced that the Applicant explored other options for the size, shape, and location of the structures but was constrained by the conditions of the lot. The Board

notes that the proposed placement of the new landing and steps will also allow the Applicant to have improved and reasonable access to the home.

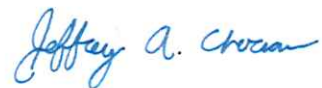
- g. The condition or situation of the Property and the intended use of the Property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the Sussex County Zoning Code.

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. Jeffrey 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



Jeffrey Chorman  
Chair

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

Date November 7, 2022