

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: KRISTEN EVANS

(Case No. 12760)

A public hearing was held after due notice on November 21, 2022. The Board members present were: Dr. Kevin Carson, Mr. Jeffrey Chorman, and Mr. Jordan Warfel.

Nature of the Proceedings

This is an application for a variance from the front yard setback requirement for an existing dwelling.

Findings of Fact

The Board found that the Applicant is requesting a variance of 6.3 feet from the thirty (30) feet front yard setback requirement for an existing manufactured home. This application pertains to certain real property located on the southeast side of Lagoon Drive within the George Moore Subdivision (911 Address: 34687 Lagoon Drive, Frankford); said property being identified as Sussex County Tax Map Parcel Number 134-19.00-37.00 ("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 August 11, 2022 ("the Survey"), a letter from the Applicant, 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 Amjad Madanat and Kristen Evans were sworn in to give testimony about the Application.
4. The Board found that Mr. Madanat testified that he is the contract purchaser of the Property and that he ordered a survey prior to purchase of the Property and the survey showed that the existing manufactured home encroached into the front yard setback area. As a result, the settlement on the purchase of the Property has been delayed pending the outcome of the Application.
5. The Board found that Mr. Madanat testified that the manufactured home was placed on the Property in 1989 and, in 1996, the home was made a Class C.
6. The Board found that Mr. Madanat testified that it would be very difficult to move the placement of the home in order to get it into compliance with the Code.
7. The Board found that Mr. Madanat testified that the Applicant inherited the Property and was previously unaware of the encroachment issue.
8. The Board found that Mr. Madanat testified that the existing shed can be moved into compliance with the Code and no variance is needed for that structure. He also noted that the gazebo will be removed from the Property.
9. The Board found that Mr. Madanat testified that the manufactured home will not cause a hardship for anyone at this point as it has been there since 1996. He noted that there is only one home beyond the Property and the placement does not affect that property owner's ability to come and go.
10. The Board found that Mr. Madanat testified that the Property already has a paved driveway which accommodates the parking of cars without intruding into the roadway.
11. The Board found that Mr. Madanat testified that there are similarly situated structures in the neighborhood.

12. The Board found that Mr. Madanat testified that there is not much room in the rear yard.
13. The Board found that Mr. Madanat testified that they are not sure if the placement was dictated by the septic system.
14. The Board found that Mr. Madanat testified that they are required to have flood insurance but he has not experienced flooding on the Property.
15. The Board found that Mr. Madanat testified that they have owned the property across the street since 2006.
16. The Board found that Jodee Diaco, who lives adjacent to the Property, was sworn in to give testimony in support of the Application.
17. The Board found that Ms. Diaco testified that she has no problem with the Application and she is glad the Applicant will be moving the gazebo because it sits right on their shared property line.
18. The Board found that Ms. Evans testified that her representative has said everything that needs to be said.
19. The Board found that Ms. Evans testified that the structure is on a permanent foundation and cannot be moved and the plumbing, heating system, and electrical would have to be adjusted for the structure to be moved.
20. The Board found that Ms. Evans testified that she inherited the Property and she is unaware of the process at the time of placement for the structure.
21. The Board found that Ms. Evans testified that the buyer will be removing the gazebo.
22. The Board found that one person appeared in support of and no one appeared in opposition to the Application.
23. 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, and development. The lot consists of approximately 5,214 square feet and borders a lagoon. The existing dwelling was placed on the lot in 1989 and a Class "C" permit was issued in 1996. The Applicant inherited the Property and discovered the encroachment as part of the process of selling the Property. The Property has a limited building envelope due to the size and narrowness of the lot and the Property was developed prior to the enactment of the small lot ordinance. As a result, at the time the home was placed, larger side and rear yard setbacks applied. A portion of the Property is considered to be within the flood zone and the proximity to the lagoon naturally has created a unique condition as well. 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 a manufactured home on the site.
 - 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 manufactured home on the lot 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 this reasonably sized manufactured home to remain on the lot. The Board is convinced that the shape and location of this manufactured home are also reasonable, which is confirmed when reviewing the survey provided by the Applicant.

The Board notes that the manufactured home is a reasonable size and has been on the lot for many years. Furthermore, the manufactured home is considered a Class C structure.

- 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. Moreover, the Applicant inherited the Property in its current condition and did not place the manufactured home on the lot.
- 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 structure will have no effect on the character of the neighborhood. No substantial evidence that the structure would somehow alter the essential character of the neighborhood was presented to the Board. The manufactured home has been on the Property for many years and no complaints were noted in the record by neighbors about its location. Rather, the adjacent neighbor appeared in support of the request and the contract purchaser of the Property also appeared in support of the request and the contract purchaser owns lands across the street. The Board also notes that the survey indicates that there is a slight gap between the edge of paving of Lagoona Drive and the front property line thereby reducing the impact of the front yard encroachment.
- 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 retain the reasonably sized manufactured home on the Property. No additions or modifications to the home are proposed. Due to the manufactured home's Class C designation and the location of the utilities, it is unlikely that the home can be easily moved away from the front property line.
- 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.
- h. The Board's approval is subject to the following condition:
 - i. The gazebo, which is shown on the Survey, shall be removed from the Property.
 - ii. The shed, which is shown on the Survey, shall be either moved into compliance with the Sussex County Zoning Code or shall be removed from the Property.

The Board granted the variance application with conditions 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 with conditions. The Board Members in favor were Dr. Kevin Carson, Mr. Jeffrey Chorman, and Mr. Jordan Warfel. No Board Member voted against the motion to approve the Application with conditions. Mr. Travis Hastings and Mr. John Williamson did not participate in the discussion or vote on 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 January 23, 2023.