

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

**IN RE: BUILDERS D/B/A INSIGHT HOMES**

**(Case No. 11245)**

A hearing was held after due notice on August 5, 2013. The Board members present were: Mr. Dale Callaway, Mr. Jeff Hudson, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for a variance from the front yard setback requirements.

Findings of Fact

The Board found that the Applicant was seeking a variance of 0.2 feet from the thirty (30) feet front yard setback requirement for the front left corner of the dwelling. The Applicant has requested that the aforementioned requested variance be granted as it pertains to certain real property south of Piney Neck Road north of Anchor Watch Loop, being Lot 23 within The Marina's at Pepper Creek development; said property being identified as Sussex County Tax Map Parcel Number 2-33-7.00-230.00. After a hearing, the Board made the following findings of fact:

1. Mark Davidson was sworn in to testify on behalf of the Application.
2. The Board found that Mr. Davidson testified that the Property is located off of Piney Neck Road in a development and that the Property is identified as Lot 23 within the development.
3. The Board found that Mr. Davidson testified that a house built by the Applicant is located on the adjacent Lot 22 and that adjacent Lot 24 is vacant.
4. The Board found that Mr. Davidson testified that the rear portion of the Property abuts to open space.
5. The Board found that Mr. Davidson testified that the Property was re-surveyed and it was discovered that a variance of approximately three (3) inches was needed to bring the Property into compliance with the Sussex County Zoning Code.
6. The Board found that Mr. Davidson testified that the site is zoned AR-1 Agricultural Residential within an Environmentally Sensitive Development District Overlay Zone, which allows for a smaller lot size when subdivided as a cluster subdivision.
7. The Board found that Mr. Davidson testified that the lot contains approximately 7,800 square feet.
8. The Board found that Mr. Davidson testified that the lot size restricts the lot to a small building foot print to build a modest size home with a two car garage making the lot unique and creating a practical difficulty.
9. The Board found that Mr. Davidson testified that the home has been completely constructed.
10. The Board found that Mr. Davidson testified that the Property cannot be developed in strict conformity with the Sussex County Zoning Code without a variance since the home has been constructed and the encroachment was not discovered until the final location survey was completed.
11. The Board found that Mr. Davidson testified that the variance of 0.2 feet is necessary to keep from having to demolish what is essentially three (3) inches of the front of the garage to meet the required setback.
12. The Board found that Mr. Davidson testified that the Applicant was the general contractor and therefore hires subcontractors to perform all the tasks to construct the home.

13. The Board found that Mr. Davidson testified that Pennoni Associates was hired to stake the home.
14. The Board found that Mr. Davidson testified that a mason was hired to dig the footer, pour the footer and build the foundation.
15. The Board found that Mr. Davidson testified that after the footer was dug and poured, the foundation was shifted three (3) inches (0.2 feet) during the course of laying the block foundation.
16. The Board found that Mr. Davidson testified that the Applicant was not aware of the error caused by the shift in the foundation.
17. The Board found that Mr. Davidson testified that the variance of 0.2 feet will not alter the essential character of the neighborhood because the encroachment is not noticeable unless you view it on the survey / site plan and even then it has to be dimensioned to notice the difference.
18. The Board found that Mr. Davidson testified that the variation of 0.2 feet is not noticeable in the field.
19. The Board found that Mr. Davidson testified that the variance of 0.2 feet is the least modification to afford relief.
20. The Board found that Mr. Davidson testified that the home has been sold dependent on the variance.
21. The Board found that Mr. Davidson testified that because of this issue Pennoni Associates, Inc. has suggested to the Applicants that they will recheck the footers after poured and to mark the footers to show the correct setback so that this type of error does not occur again.
22. The Board found that Mr. Davidson testified that fourteen (14) homes have been developed to date, of which six (6) have been sold, with no variances being necessary.
23. Mr. Davidson submitted exhibits which included responses to the variance standards relating to uniqueness, the possibility of development, the effect on surroundings, and the effect of variances; a survey depicting the proposed home location and setbacks; an as-built survey; a foundation drawing prepared for Insight Homes; and a building restriction line exhibit for this lot and the lots on either side.
24. The Board found that there were two (2) parties in attendance in support of the Application and that there were no parties present in opposition.
25. Based on the findings above and the testimony presented at the public hearing and the public record, the Board determined that the Application met the standards for granting a variance. The requested variance represents the least possible modification of the regulation at issue. The Property is unique because the lot is only 75 feet wide. The variance is necessary to enable reasonable use of the Property. The exceptional practical difficulty was not created by the Applicant. The variance will not alter the essential character of the neighborhood. The requested variance is the minimum variance necessary to afford relief.

The Board approved the variance application finding that it met the standards for granting a variance.

Decision of the Board

Upon motion duly made and seconded, the Application was approved. The Board Members voting to approve the Application were Mr. Dale Callaway, Mr. Jeff Hudson, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman. No Member voted against the Motion to Approve the Application.

BOARD OF ADJUSTMENT  
OF SUSSEX COUNTY

  
Dale Callaway  
Chairman

If the use is not established within one (1)  
year from the date below the application  
becomes void.

Date September 10, 2013.