

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: JOHN DUFFY & TOM BUESCHER

(Case No. 11299)

A hearing was held after due notice on December 16, 2013. The Board members present were: Mr. Dale Callaway, Mr. Jeffrey Hudson, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for a variance from the side yard requirement from an Environmentally Sensitive Development District Overlay Zone Subdivision (Deep Valley Farm).

Findings of Fact

The Board found that the Applicants were requesting a variance from the side yard requirement from an Environmentally Sensitive Development District Overlay Zone Subdivision (Deep Valley Farm) so that each of the 192 lots in the subdivision on the Property has an eight (8) feet side yard setback. The Applicants have requested that the aforementioned requested variance be granted as it pertains to certain real property located south side of US Route 9 north side of Beaverdam Road 0.50 mile west of Delaware Route One at Five Points; said property being identified as Sussex County Tax Map Parcel Number 3-34-5.00-176.00 & 177.00. After a hearing, the Board made the following findings of fact:

1. The Board found that the Office of Planning & Zoning did not receive any correspondence regarding the Application.
2. Mark Davidson and John Duffy were sworn in to testify on behalf of the Applicants and Dennis Schrader, Esquire, presented the case to the Board on behalf of the Applicants.
3. The Board found that Mr. Schrader stated that the Applicants seek a side yard variance so that each of the 192 lots in the subdivision on the Property has an eight (8) feet side yard setback.
4. The Board found that Mr. Schrader stated that Mr. Duffy is an owner of Lewes Crossing Capital Partners, LLC, which owns the Property.
5. The Board found that Mr. Schrader stated that the Property is located on Route 9 across from the Nassau Valley Vineyard project.
6. The Board found that Mr. Schrader stated that the project consists of eighty four (84) acres and 192 lots.
7. The Board found that Mr. Schrader stated that the Applicants are requesting a variance of two (2) feet from the ten (10) feet side yard setback requirement on both sides for all 192 lots in the subdivision.
8. The Board found that Mr. Schrader stated that there are lots that will only be sixty six (66) feet wide.
9. The Board found that Mr. Schrader stated that the reduction of the side yard setback requirement will allow for a fifty (50) feet wide building envelope.
10. The Board found that Mr. Schrader stated that a previous variance application was withdrawn.
11. The Board found that Mr. Schrader stated that the name of the subdivision will soon be changed to Lewes Crossing.
12. The Board found that Mr. Davidson testified that he represents Pennoni Associates, Inc., which designed the subdivision for the previous owner.
13. The Board found that Mr. Davidson testified that the project started in 2007 and that, in May 2012, the Planning & Zoning Commission granted final approval of the subdivision.
14. The Board found that Mr. Davidson testified that the subdivision is located in an Environmentally Sensitive Overlay Zone.
15. The Board found that Mr. Davidson testified that the subdivision was recorded in June 2012 and that the Applicants purchased the Property in May 2013.

16. The Board found that Mr. Davidson testified that the Applicants seek an eight (8) feet side yard setback throughout the subdivision.
17. The Board found that Mr. Davidson testified that the lots are a minimum of 7,500 square feet in size and have a minimum sixty (60) feet lot width.
18. The Board found that Mr. Davidson testified that there are ninety two (92) lots that are less than seventy (70) feet wide.
19. The Board found that Mr. Davidson testified that the variance will provide a fifty (50) feet wide building envelope needed for the style homes Ryan Homes plans to build in the subdivision and that the variance will provide uniformity throughout the subdivision.
20. The Board found that Mr. Davidson testified that the subdivision was designed not to exceed the density regulations and to preserve existing wetlands and wooded areas.
21. The Board found that Mr. Davidson testified that all the rear yards in the subdivision back up to open space.
22. The Board found that Mr. Davidson testified that thirty two (32) acres of the subdivision has been dedicated to open space which is much greater than the minimum required by the Sussex County Code and that landscaping buffers will surround the entire subdivision.
23. The Board found that Mr. Davidson testified that there will be no change to the drainage and that the subdivision will use central water.
24. The Board found that Mr. Davidson testified that the State Fire Marshal supports the proposed side yard setback requirement of eight (8) feet since there will be fire hydrants throughout the subdivision.
25. The Board found that Mr. Davidson testified that the subdivision is currently under construction but no lots have been sold and no building permits have been obtained.
26. The Board found that Mr. Davidson testified that all lots will benefit by having the same side yard setback requirement.
27. The Board found that Mr. Davidson testified that the variance will not alter the character of the neighborhood.
28. The Board found that John Duffy, under oath, confirmed statements made by Mr. Schrader and Mr. Davidson.
29. The Board found that Mr. Davidson testified that the subdivision has no entrances on Route 9 and that Beaverdam Road is being widened.
30. The Board found that no parties appeared in support of or in opposition to the Application.
31. Based on the testimony presented at the public hearing and the public record, the Board determined that the Application met the standards for granting a variance for the following reasons. The lots are unique due to their small lot size. The variance is necessary to enable reasonable use of the Property. The difficulty was not created by the Applicants as the Property is an environmentally sensitive area. The variance will not alter the essential character of the neighborhood. The variance sought is the minimum variance necessary to afford relief. The variance requested is the least modification necessary of the regulation.

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. Jeffrey 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 February 18, 2014