

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

**IN RE: MAIN STREET HOMES AT SUSSEX, LLC**

**(Case No. 11688)**

A hearing was held after due notice on January 4, 2016. The Board members present were: Mr. Dale Callaway, Mr. John Mills, Mr. Jeff Hudson, Mr. Norman Rickard, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for variances from the front yard and rear yard setback requirements.

Findings of Fact

The Board found that the Applicant is seeking a variance of five (5) feet from the ten (10) feet rear yard setback requirement for Lots 1 – 20, or a variance of five (5) feet from the thirty (30) feet front yard setback requirement for all thirty-two (32) lots in the development. This application pertains to certain real property located is The Woods at Arnell Creek located off of Fairway Drive (911 Address: None Available); said property being identified as Sussex County Tax Map Parcel Number 3-34-18.00-957.00–988.00 Inclusive.

1. The Board was given copies of the Application, a portion of the tax map of the area, a portion of the minutes from the meeting of the Planning & Zoning Commission dated May 14, 2008, a survey of the Property dated April 3, 2008, and a survey of the Property dated March 14, 2014.
2. The Board found that the Office of Planning & Zoning received no letters in support of the Application and six (6) letters in opposition to the Application.
3. The Board found that David Dombert was sworn in to testify about the Application. James Fuqua, Esquire, presented the case on behalf of the Applicant and submitted exhibits for the Board to review.
4. The Board found that Mr. Fuqua stated that the Applicant is not seeking both a rear yard and a front yard variance. The Applicant would prefer a variance for the front yard setback requirement for all lots be approved to maintain uniformity.
5. The Board found that Mr. Fuqua stated that the Applicant is the owner and developer of the development known as the Woods at Arnell Creek. No lots have been sold in the development but site work has started on the Property.
6. The Board found that Mr. Fuqua stated that the original subdivision was approved in 2008 for thirty-five (35) lots and the original subdivision approval allowed for a rear yard setback of ten (10) feet. The approval, however, was voided when the plan was not recorded.
7. The Board found that Mr. Fuqua stated that the subdivision was approved again 2013 for thirty-two (32) lots. Due to changes in the subdivision regulations, a twenty (20) feet wide buffer around the perimeter of the subdivision was required.
8. The Board found that Mr. Fuqua stated that the new buffer requirements resulted in the reduction of the length of the lots and in the removal of three (3) lots from the original plan.
9. The Board found that Mr. Fuqua stated that the type of dwellings marketed for this area will not fit within the building envelope and an additional five (5) feet is needed to accommodate this type of dwelling.
10. The Board found that Mr. Fuqua stated that the market calls for first floor living which includes a first floor master suite which results in this style dwelling having a larger footprint.

11. The Board found that Mr. Fuqua stated that the concerns raised by most of the opposition pertain to the subdivision and not the proposed variance.
12. The Board found that Mr. Fuqua stated that trees on the Property have been cleared due to the site work and the buffer will be replanted and landscaped per Sussex County regulations.
13. The Board found that Mr. Fuqua stated that the rear yard variance request would only affect five (5) lots in the neighboring subdivision.
14. The Board found that Mr. Fuqua stated that he believes the front yard variance request is the preferred solution for the Applicant as it will allow for the size home intended for these lots to be built and the front yard variance will only affect the interior lots within the subdivision. The front yard variance request would have no effect to the neighboring subdivision. The front yard variance would also create uniformity in the community.
15. The Board found that Mr. Fuqua stated that the situation is unique and the exceptional practical difficulty was created by the change in the buffer requirement.
16. The Board found that Mr. Fuqua stated that hat the Property cannot otherwise be developed due to the buffer requirement.
17. The Board found that Mr. Fuqua stated that the difficulty was not created by the Applicant.
18. The Board found that Mr. Fuqua stated that the variance will not alter the character of the neighborhood and that the variance is the minimum variance necessary to afford relief.
19. The Board found that Mr. Dombert, under oath, affirmed the statements made by Mr. Fuqua and testified that the proposed dwellings are 2,800 square feet two-story dwellings with first floor master suites.
20. The Board found that Richard Morgante, Patrice Riffin, Lyle Riffin, and Karen Oates were sworn in and testified in opposition to the Application.
21. The Board found that Mr. Morgante testified that he is the President of Old Landing Woods Homeowners Association and the Association opposes this application.
22. The Board found that Mr. Morgante testified that Old Landing Woods was developed in 1974 and consists of forty-one (41) large lots. Old Landing Woods abuts the Applicant's development and the only access to the Woods at Arnell Creek is through the roads in Old Landing Woods.
23. The Board found that Mr. Morgante testified that six (6) lots in Old Landing Woods abut to lots in the Woods at Arnell Creek and the rear setback variance will place the homes closer to the lots in Old Landing Woods.
24. The Board found that Mr. Morgante testified that they believed the mature trees in the buffer would remain.
25. The Board found that Mr. Morgante testified that the difference between the subdivisions will be clearly visible.
26. The Board found that Mr. Morgante testified that there have not been any dwellings built and there is no reason a dwelling cannot be built within the required setback requirements.
27. The Board found that Mr. Morgante testified that there is no a hardship to the owner.
28. The Board found that Mr. Morgante testified that the Homeowners Association is opposed to any variances being proposed.
29. The Board found that Ms. Riffin testified that she has lived in Old Landing Woods for thirty-three (33) years and her property is adjacent to Lot 20 in the new development.

30. The Board found that Ms. Riggin testified that the original plan had only four (4) lots adjacent to Old Landing Woods but the new plan has five (5) lots adjacent to Old Landing Woods.
31. The Board found that Ms. Riggin testified that she is concerned for the water issues and drainage problems the new lots may create. Lot 20 is currently under water.
32. The Board found that Ms. Riggin testified that large houses on small lots create less impermeable surface and she is concerned the variance will crowd the area.
33. The Board found that Ms. Riggin testified that there is no stormwater management plan and that she is afraid that water will run off into her yard.
34. The Board found that Ms. Riggin testified that the lots in the Woods at Arnell Creek are smaller than the lots in Old Landing Woods.
35. The Board found that Ms. Riggin submitted photographs for the Board to review.
36. The Board found that Mr. Riggin testified that the more the lot is covered with improvements the more run off issues will be created.
37. The Board found that Mr. Riggin testified that the surrounding communities have stormwater management ponds. The Woods at Arnell Creek do not have stormwater management ponds and DNREC has no delineation plan for this development.
38. The Board found that Mr. Riggin testified that he has lived in Old Landing Woods for thirty years and that the lots in Old Landing Woods are large enough to allow for proper run-off.
39. The Board found that Mr. Riggin testified that he feels the Applicant can design a different house to fit on the lots.
40. The Board found that Ms. Oates testified that Old Landing Woods is forty-two (42) years old. She testified that the variance creates a hardship for the neighbors and that the developer can build smaller houses on the lots.
41. The Board found that Mr. Fuqua stated in rebuttal that there is a Stormwater Management plan for the development and there are rules and regulations the developer must adhere to. There will be swales and grading to address drainage for the development and the Applicant is not permitted to encroach into the existing wetlands.
42. The Board found that Mr. Fuqua stated that the proposed variances will not affect the stormwater management pond for the development.
43. The Board found that no parties appeared in support of the Application.
44. The Board found that fifteen (15) parties appeared in opposition to the Application.
45. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, the Board determined that the application for a front yard variance met the standards for granting a variance. The findings below further support the Board's decision to approve the Application.
  - a. The Property, which is a subdivision, is unique due to the existence of wetlands which clearly limit the buildable area of the subdivision. The situation is also unique in that the Applicant previously obtained approval for a subdivision of 35 lots only to have to refile for subdivision approval after mistakenly failing to file the record plan. The Applicant later obtained subdivision approval in 2013 for 32 lots which resulted from new subdivision regulations which required a buffer of 20 feet around the perimeter of the subdivision. The resulting subdivision has left some lots irregularly shaped or small thereby creating an exceptional practical difficulty for the Applicant.
  - b. Due to the uniqueness of the Property and the situation, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property consists of 32 lots of differing shapes and sizes and

the buildable area of some of those lots are limited due to their size and shape. The Applicant seeks to construct dwellings of a reasonable size and consistent with the market demands but is unable to do so without violating the Sussex County Zoning Code. The Board is convinced that the front yard variance is necessary to enable the reasonable use of the Property as the variance will allow a reasonable dwelling to be constructed on each of the lots on the Property. By having a front yard variance of 5 feet on all lots will also enable for uniformity within the development.

- c. The exceptional practical difficulty was not created by the Applicant. The Applicant did not create the unusual shape of the Property nor did the Applicant create the wetlands on the Property. These conditions have clearly limited the Applicant's ability to develop the Property and the development was further complicated by the new buffer requirement around the perimeter of the development. These unique conditions have clearly created an exceptional practical difficulty for the Applicant in designing a dwelling to place on the lots.
  - d. The front yard 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 members of the opposition who live in the nearby Old Landing Woods community raised concerns about variances of any type being granted on the Property. Some of those lots abut the rear of lots being developed by the Applicant. While the rear yard variance would enable the Applicant to build homes closer to the lots in Old Landing Woods, the front yard variance being requested would not result in those homes being closer to Old Landing Woods. The Board finds that the front yard variance would not alter the character of the neighborhood and will allow the Applicant to construct a reasonably sized home. The homes will be no closer to the opposition's homes than if the variance had not been granted. Furthermore, the Board notes that there is a buffer of 20 feet surrounding the perimeter of the community thereby further separating the lots in the Woods at Arnell Creek from the lots in Old Landing Woods. The opposition raised concerns about the effect of the front yard variance on the stormwater management pond. The Applicant has demonstrated that a stormwater management plan is in effect and that it must follow certain regulations to address storm water concerns in the area. Ultimately, the Board was not convinced that the front yard variance would somehow alter the essential character of the neighborhood or be detrimental to the public welfare.
  - e. The front yard 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 front yard variance sought will allow the Applicant to construct reasonably sized dwellings on the lots.
46. The Board denied the rear yard variance because the need for the rear yard variance was rendered moot by the granting of the front yard variance. The Applicant demonstrated that it preferred a front yard variance and would not need both a front yard and rear yard variance. Accordingly, since the front yard variance was granted, the rear yard variance was not necessary to enable reasonable use of the Property.

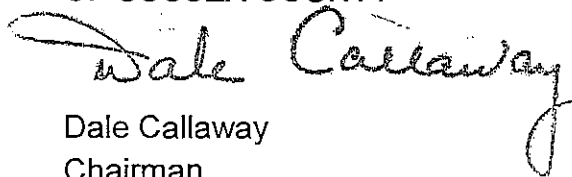
The Board granted the variance application for a front yard variance finding that it met the standards for granting a variance and the Board denied the variance application

for a rear yard variance finding that it failed to meet the standards for granting a variance.

Decision of the Board

Upon motion duly made and seconded, the variance application was approved in part and denied in part. The Board Members in favor of the motion were Mr. Dale Callaway, Mr. Jeff Hudson, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman. No Board Member voted against the Motion to approve the variance application in part and to deny the application in part.

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 March 1, 2014