

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: WINDSTONE, LLC

(Case No. 11997)

A hearing was held after due notice on July 24, 2017. The Board members present were: Mr. Dale Callaway, Ms. Ellen Magee, 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 requirement.

Findings of Fact

The Board found that the Applicant is seeking a variance of 14.9 feet from the thirty (30) feet front yard setback requirement and a variance of 1.0 foot from the thirty (30) feet front yard setback requirement for a proposed dwelling. This application pertains to certain real property located at the south side of Riverstone Road approximately 110 feet east of Brookstone Drive (911 Address: 29649 Riverstone, Drive, Milton); said property being identified as Sussex County Tax Map Parcel Number 2-35-22.00-1102.00.

1. The Board was given copies of the Application, a Certificate of Merger, a deed to the Property, a survey dated April 19, 2017, 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 the Application and one (1) letter in opposition to the Application.
3. The Board found that Jamie Seckler and Justin Hensley were sworn in to testify about the Application.
4. The Board found that Mr. Seckler testified that the variance is needed due to the uniqueness of the lot. The Property is pie-shaped and only has one side yard. These conditions have reduced the buildable area of the lot.
5. The Board found that Mr. Seckler testified that a large portion of the Property is considered the front yard. The Property has 166 feet of road frontage which is all considered to be the front yard rather than a corner side yard as seen with other lots in the neighborhood.
6. The Board found that Mr. Seckler testified that a home consisting of approximately 1,000 square feet would fit on the lot but would not be similar to other homes in the neighborhood and a smaller home would likely affect property values.
7. The Board found that Mr. Seckler testified that the proposed home would conform with the orientation of other lots and would face Riverstone Drive.
8. The Board found that Mr. Seckler testified that Lot 131, which is located to the rear of the Property, is a traditional corner lot with a 15 feet setback from Riverstone Drive.
9. The Board found that Mr. Seckler testified that the proposed variance would allow for construction of a home that fits with the character of the community and the home will be consistent with the orientation of homes on Lots 128 and 129.
10. The Board found that Mr. Seckler testified that there is approximately 13 feet from the edge of the curb of Riverstone Drive to the property line and the gap between the curb and the property line has grass.
11. The Board found that Mr. Seckler testified that the design of home will not affect visibility along Riverstone Drive.
12. The Board found that Mr. Hensley testified that one-third (1/3) to one-half (1/2) of the home sites have been developed.
13. The Board found that Mr. Hensley testified that he works for the Applicant and he worked with the engineer to design a home that will fit on the lot. He found a model

home that would fit on the lot but it would not have a garage and would not fit with the character of the neighborhood.

14. The Board found that Mr. Hensley testified that the Property is the only home in the community with this shape. The community has 360 home sites.
15. The Board found that Frank Schmidt and James Gonzalez were sworn in to testify in opposition to the Application.
16. The Board found that Mr. Schmidt testified that he lives on Lot 129 which is adjacent to the Property and there are worsening drainage issues in the rear yard. His window well filled with water during the last heavy rain.
17. The Board found that Mr. Schmidt testified that an LC Milton 1 model home would be a better option for the lot. The LC Milton 1 model would fit better on the lot and would require a lesser variance than the proposed home and the LC Milton 1 model is nearly identical to other homes in the neighborhood.
18. The Board found that Mr. Schmidt testified that the proposed home will block his views and box in his property.
19. The Board found that Mr. Schmidt testified that the proposed home is long and narrow and the other homes in the neighborhood are more square.
20. The Board found that Mr. Gonzalez testified that he owns Lot 131 and his home is 32 feet from the curb of Riverstone Drive. His setback is 15 feet from Riverstone Drive and 30 feet from Brookstone.
21. The Board found that Mr. Gonzalez testified that he believes the Applicant created the difficulty when he created the lot.
22. The Board found that Mr. Gonzalez testified that the variances will alter the essential character of the neighborhood.
23. The Board found that Mr. Hensley testified that LC Homes ceased making the LC Milton 1 model home 4 years ago, and that, even if the Applicant used the floor plan for the LC Milton 1 model home, a variance would still be needed. The proposed home, on the other hand, is one of the smallest available model homes.
24. The Board found that no parties appeared in support of the Application.
25. The Board found that two (2) parties appeared in opposition to the Application.
26. The Board tabled the Application until August 7, 2017, at which time the Board discussed and voted on the Application.
27. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, which the Board weighed and considered, 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 in size and shape. The Property has an exceptionally large front yard and only has three sides. The Property is adjacent to Riverstone Drive which curves significantly near the Property. This unusual condition has created an exceptionally small building envelope; particularly in comparison with other neighboring properties. If the Property were a traditional corner lot adjacent to two roads rather than being adjacent to one road that curved nearly 90 degrees, the building envelope would be significantly larger. Lot 131 to the rear of the Property, for example, has a building envelope that allows for construction of a dwelling within 15 feet of Riverstone Drive. The Property's unusual shape has created an odd and limited building envelope. The building envelope is further limited by the small size of the lot. The Property consists of only 8,367 square feet. There is also approximately 13 feet from the curb of Riverstone Drive to the front property line thereby giving the front yard – which is the area in question - the appearance that it is larger than it actually is. The Board finds that the unique characteristics of this Property and the situation have limited the buildable area available to the Applicant and have

- created an exceptional practical difficulty for the Applicant who seeks to construct a reasonably sized dwelling on the lot.
- b. Due to the uniqueness of the lot, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property has a unique buildable area due to its odd shape and small size. The Applicant seeks to construct a dwelling of a reasonable size that fits with the character of the neighborhood 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 a reasonably sized dwelling to be constructed on the Property. The Board is convinced that the shape and location of the dwelling are also reasonable, which is confirmed when reviewing the survey provided by the Applicant.
 - c. The exceptional practical difficulty was not created by the Applicant. The Property, which is not particularly large, is constrained due to its small size and unique shape. The Board is convinced that the exceptional practical difficulty was not created by the Applicant but was created the lot's unique characteristics.
 - d. 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 dwelling will have no effect on the character of the neighborhood. The dwelling will be similar to other homes in the neighborhood and will be designed to minimize encroachments into the setback areas. The opposition suggested that an LC Model 1 home would be appropriate on the site but that home is no longer being constructed and, even if it were available, the model home would also need a variance. No evidence was presented which convinced the Board that the variances would somehow alter the essential character of the neighborhood or be detrimental to the public welfare. The Board also notes that the dwelling will be a similar distance from Riverstone Drive as the dwelling on Lot 131. Furthermore, the edge of the curb of Riverstone Drive is approximately 13 feet from the front property line thereby giving the home the appearance that it is farther from the front property line than it actually is.
 - e. The variances sought are the minimum variances necessary to afford relief and the variances requested represent the least modifications possible of the regulations at issue. The Applicant has demonstrated that the variances sought will allow the Applicant to construct a reasonably sized dwelling on the Property. This dwelling will be consistent with others in the neighborhood and is one of the smallest models available from the builder thereby minimizing the encroachments into the setback areas. The Board also notes that the home will be right at the side and rear yard setback lines to further minimize the encroachments into the front yard setback area.

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 Mr. Dale Callaway, Ms. Ellen Magee, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman. No Board Member voted against the Motion to approve the variance application.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY

Dale Callaway
Dale Callaway
Chairman

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

Date September 19, 2017