

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

**IN RE: SAM SLOAN & LYN SLOAN**

**(Case No. 12218)**

A hearing was held after due notice on December 10, 2018. The Board members present were: Mr. Dale Callaway, Ms. Ellen Magee, Mr. Bruce Mears, Mr. John Mills, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for variances from the minimum lot width requirement and minimum lot area for existing and proposed lots.

Findings of Fact

The Board found that the Applicants are seeking variances from the minimum lot width and lot size requirements. The variances requested are as follows: 1) a variance of 42.07 feet from the 150 feet minimum lot width requirement for proposed Lot 1; 2) a variance of 22,283 square feet from the 43,460 square foot lot size requirement for proposed Lot 1; 3) a variance of 41.44 feet from the 150 feet minimum lot width requirement for proposed Lot 2; 4) a variance of 22,307 square feet from the 43,460 square foot lot size requirement for proposed Lot 2; 5) a variance of 50 feet from the 150 feet minimum lot width requirement for proposed Lot 3; 6) a variance of 20,878 square feet from the 43,460 square foot lot size requirement for proposed Lot 3; 7) a variance of 41 feet from the 150 feet minimum lot width requirement for proposed Lot 4; 8) a variance of 22,742 square feet from the 43,460 square foot lot size requirement for proposed Lot 4; 9) a variance of 50 feet from the 150 feet minimum lot width requirement for proposed Lot 5; 10) a variance of 21,910 square feet from the 43,460 square foot lot size requirement for proposed Lot 5; 11) a variance of 50 feet from the 150 feet minimum lot width requirement for proposed Lot 6; 12) a variance of 21,910 square feet from the 43,460 square foot lot size requirement for proposed Lot 6; 13) a variance of 50 feet from the 150 feet minimum lot width requirement for proposed Lot 7; 14) a variance of 22,000 square feet from the 43,460 square foot lot size requirement for proposed Lot 7; 15) a variance of 53 feet from the 150 feet minimum lot width requirement for proposed Lot 8; 16) a variance of 23,273 square feet from the 43,460 square foot lot size requirement for proposed Lot 8; 17) a variance of 50.33 feet from the 150 feet minimum lot width requirement for proposed Lot 9; 18) a variance of 19,193 square feet from the 43,460 square foot lot size requirement for proposed Lot 9; 19) a variance of 54.91 feet from the 150 feet minimum lot width requirement for proposed Lot 10; 20) a variance of 19,266 square feet from the 43,460 square foot lot size requirement for proposed Lot 10; 21) a variance of 50 feet from the 150 feet minimum lot width requirement for proposed Lot 11; and 22) a variance of 18,651 square feet from the 43,460 square foot lot size requirement for proposed Lot 11.

This certain real property is located on the northeast side of Pinewater Drive, approximately 700 feet north of Multiflora Drive in the Pinewater Farm Development (911 Address: Not Available); said property being identified as Sussex County Tax Map Parcel Number 2-34-17.12-5.00, 2-34-17.12-5.01, and 2-34-17.12-5.02.

1. The Board was given copies of the Application, a portion of the tax map of the area, an aerial photograph of the Property, a survey dated May 24, 2018, a proposed site plan dated August 2018, a proposed site plan dated September 2018, and a proposed site plan rendering dated October 2018.
2. The Board found that the Office of Planning & Zoning received no correspondence in support of or in opposition to the Application.

3. The Applicants propose to subdivide the Property into 11 lots with other portions of the Property being used for common area, stormwater management, and a road.
4. The Board found that Sam Sloan, Lawton Myrick, and Hans Medlarz were sworn in to testify about the Application.
5. The Board found that Mr. Sloan testified that the Property has been in his family since 1894 and he currently owns the Property with his siblings. They intend to subdivide the Property and need the variances in order to subdivide the Property.
6. The Board found that Mr. Sloan testified that the Property is located between 2 subdivisions (Herring Creek Estates and Pinewater Farms). Herring Creek Estates lots consist of ½ acre. He met with homeowners in Pinewater Farms and he has collected twenty letters of support. He is in the process of obtaining more support letters from neighbors in Pinewater Farms about this property being annexed into that subdivision.
7. The Board found that Mr. Sloan testified that there is water and sewer in the area but bringing public water to the site is not feasible. There is no public water in the neighboring subdivisions. Public sewer will be coming to the area and there is an easement on this site and a pump station to be placed on the west side of the Property.
8. The Board found that Mr. Myrick testified that the land is unique as it is a 7.9 acre parcel of land sandwiched between two subdivisions – Pinewater Farms and Herring Creek Estates. The lots in the two subdivisions are between ½ and ¾ acre and the proposed subdivision will be consistent with the neighboring communities. He argued that this property is a geographical oddity as there is a large depressed area in the center of the site which was formally used as a borrow pit.
9. The Board found that Mr. Myrick testified that the Property cannot otherwise be developed without the variance because, per Sussex County Code §115-194 (B)1, any lot created after the adoption of this section shall contain a minimum lot with size of 150 feet and be at least 1 acre in size unless central water and sewer are provided.
10. The Board found that Mr. Myrick testified that public sewer is being brought to the area but public water is unavailable and it would be cost prohibitive to bring water to the site.
11. The Board found that Mr. Myrick testified that the exceptional practical difficulty was not created by the Applicants, but by the easements for Sussex County Sewer system bisecting the property.
12. The Board found that Mr. Myrick testified that the variances will not alter the essential character of the neighborhood but will blend in as the neighboring subdivisions have lot sizes between 0.5 acres to 0.75 acres. The proposed lots will measure .47 acres to .56 acres.
13. The Board found that Mr. Myrick testified that the variances requested are the minimum variances necessary to allow relief.
14. The Board found that Mr. Myrick testified that all 11 lots will have a minimum lot size of 20,000 square feet and minimum lot width of 100 feet.
15. The Board found that Mr. Myrick testified that the cost to bring public water to the site would be in excess of \$300,000 and would be a hardship for the land owners.
16. The Board found that Mr. Myrick testified that Sussex County contacted the Applicants about public sewer easements on the Property and these easements have been recorded.
17. The Board found that Mr. Myrick testified that water quality will not be adversely impacted by the creation of this subdivision. Rather, by providing public sewer, the subdivision will result in the removal of existing septic tanks and fields and will ecologically benefit ground water in the area.
18. The Board found that Mr. Myrick testified that the depressed area of the Property will likely be used for a stormwater management area.

19. The Board found that Mr. Myrick testified that Tidewater Utilities provides service in the area and the Applicants would have to apply to be part of Tidewater's service area.
20. The Board found that Mr. Medlarz testified that the Property will be part of the Herring Creek Sewer District.
21. The Board found that Mr. Medlarz testified that there was no support for public water in the area except for Winding Creek Village. Sussex County went to neighboring communities and did not receive enough petitions to hold a referendum on public water.
22. The Board found that Mr. Medlarz testified that the situation was created by Sussex County when they asked for two easements bisecting the property for the placement of the pump station.
23. The Board found that Mr. Medlarz testified that Sussex County purchased adjacent land for a pump station and the Applicants were cooperative even though it created an unfavorable situation for them.
24. The Board found that Mr. Medlarz testified that public water is about 7,000 feet away from site.
25. The Board found that Mr. Medlarz testified that the granting of the variances will not adversely affect water quality or adversely impact tidal water bodies adjacent to the conservation zone.
26. The Board found that no parties appeared in support of or in opposition to the Application.
27. The Board tabled its decision on the Application until December 17, 2018, at which time it voted on the Application.
28. 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, which consists of 7.749 acres as shown on the survey, is unique as it a large lot in the conservation zone and is located between two other subdivisions. Since the Property is in a conservation zone, if the Property were subdivided, the lots would be required to be larger than otherwise required by the Code. If the Property was serviced by public water and public sewer, however, the lots could be smaller. The Property is unique because it will be served by public sewer but not public water. While the proposed lots are smaller and narrower than allowed in a conservation zone, the lots in the neighboring subdivisions typically consist of lots under 1 acre in size. The Property is also unique because it is burdened by sewer easements which limit its developable area. Likewise, the developable area is further limited by a depressed area on the site. These unique characteristics of the Property have created an exceptional practical difficulty for the Applicants who seek to subdivide the lot.
  - b. Due to the Property's unique conditions, the Property cannot be subdivided in strict conformity with the Sussex County Zoning Code. The Applicants seek to subdivide the Property into 11 lots but are unable to do so without violating the Sussex County Zoning Code due to the unique conditions of the lot. The Board is convinced that the proposed subdivision of the Property is reasonable and that the variances requested are necessary to enable the reasonable use of the Property as the variances will allow the Applicants to reasonably subdivide the Property. The survey attached to the Application confirms that the subdivision is reasonable.
  - c. The exceptional practical difficulty was not created by the Applicants. The Applicants did not create the unique size and shape of the Property. No

evidence was presented that the lot's size and shape has changed since the implementation of the lot width requirement in the Sussex County Zoning Code for conservation zone district properties. Development of the Property is also limited due to the sewer easements and depressed area which limit the areas where the lots can be subdivided. The Applicants seek to annex the Property into the adjacent community, which has lots of a similar size and shape as the lots proposed by the Applicants. The unique characteristics of the Property are clear when reviewing the survey. The Board is convinced that these unique conditions have created an exceptional practical difficulty for the Applicants.

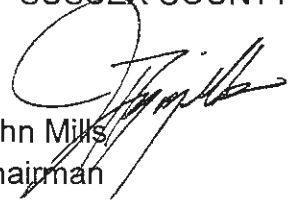
- d. The variances will not alter the essential character of the neighborhood nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare. The Property will be subdivided into 11 lots. The unrebutted evidence confirms that there are other lots in the surrounding communities which are similar in size and shape and no evidence was presented that the proposed subdivision of the Property would somehow alter the essential character of the neighborhood or be detrimental to the public welfare. Rather, neighbors have expressed support to the Applicants.
- 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 Applicants have demonstrated the variances will allow the Property to be subdivided as proposed. These lots are consistent with lots in neighboring communities.
- f. The Applicants have demonstrated that special conditions or circumstances exist in that the Property is subject to sewer easements and has a depressed area which cannot be developed. The nature of the divided lots is similar to the size and characteristics of neighboring properties. These conditions are peculiar to the land within the County and a literal enforcement of provisions within the conservation zone, as designated by this section would result in unwarranted hardship.
- g. The variances requested are not based upon conditions or circumstances which are a result of actions by the Applicants, other than the filing of the referenced subdivision application. The 7.749 acre parcel is otherwise appropriate for subdivision and the resulting lots shall be similar in conformation and in size to the surrounding community of subdivided lots. The variance request does not arise from any condition relating to the land use, either permitted or nonconforming, on any neighboring property.
- h. The granting of the variances will not adversely affect water quality or adversely impact the tidal water bodies adjacent to the Conservation Zone. The testimony of the Sussex County Engineer verified that the subdivision meets this standard. The subdivision of the Property will also result in the lots connecting to a public sewer and the abandonment of existing septic systems. Variances will be in harmony with the general spirit and intent of the section and any subsequent regulations.
- i. The application for a variance has, in fact, been made, in writing to, the Board of Adjustment on forms provided by the County, with a copy to the County Administrator.

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. Bruce Mears, Mr. John Mills, and Mr. Brent Workman. No Board Members voted against the Motion to approve the variance application.

BOARD OF ADJUSTMENT  
OF SUSSEX COUNTY



John Mills  
Chairman

If the use is not established within two (2) years from the date below the application becomes void.

Date March 5, 2019.