

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: KEVIN BURR & PAULA BURR

(Case No. 12399)

A hearing was held after due notice on January 6, 2020. The Board members present were: Dr. Kevin Carson, Mr. Jeff Chorman, Ms. Ellen Magee, Mr. John Williamson, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for a variance from the rear yard setback requirement for a proposed structure.

Findings of Fact

The Board found that the Applicants are requesting a variance of 7.17 feet from the twenty (20) feet rear yard setback requirement for a proposed dwelling. This application pertains to certain real property located on the west side of Linden Drive approximately 332 feet north of Woodland Circle within the Angola by the Bay Subdivision (911 Address: 22934 Linden Drive, Lewes); said property being identified as Sussex County Tax Map Parcel Number 2-34-11.20-71.00. After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, an aerial photograph of the Property, a survey of the Property dated May 29, 2019, 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 or in opposition to the Application.
3. The Board found that Bryan Elliott was sworn in to testify about the Application.
4. The Board found that Mr. Elliott testified that he represents Insight Homes who will be constructing the proposed home.
5. The Board found that Mr. Elliott testified that, in 2018, the small lot ordinance passed and he assumed that the ordinance applied to this lot.
6. The Board found that Mr. Elliott testified that the lot is unique because it consists of exactly 10,000 square feet and that, if the Property was just one square foot smaller, it would qualify for the small lot ordinance and lesser setback requirements would apply. The Property, however, consists of 10,000 square feet and the small lot ordinance applies only to lots consisting of less than 10,000 square feet. This property does not satisfy those requirements.
7. The Board found that Mr. Elliott testified that the rear yard is adjacent to wooded common area and that the homeowners association has approved this request.
8. The Board found that Mr. Elliott testified that the Property originally consisted of two lots which were later combined into 1 lot.
9. The Board found that Mr. Elliott testified that the need for the variance was not created by the Applicants.
10. The Board found that Mr. Elliott testified that, if the variance is allowed, the home will not alter the essential character of the neighborhood.
11. The Board found that Mr. Elliott testified that the home will be a nicer home.
12. The Board found that Mr. Elliott testified that, if the variance were denied, the Applicants would have to construct a smaller house. The proposed house is a ranch style house measuring 28 feet by 60 feet.
13. The Board found that Mr. Elliott testified that there is no septic system on the lot.
14. The Board found that Mr. Elliott testified that the HVAC and steps can comply with setback requirements and that the patio or deck could be placed in the side yard.

15. The Board found that Mr. Elliott testified that the design of the house necessitates why it cannot be built in compliance with the Code.
16. The Board found that no one appeared in support of or in opposition to the Application.
17. 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 failed to meet the standards for granting a variance. The findings below further support the Board's decision to deny the Application.
 - a. The Applicants failed to demonstrate that the Property was unique and that the uniqueness of the Property has created an exceptional practical difficulty. The lot is a lot measuring 10,000 square feet and is nearly square. The Applicants did not present evidence of unique topography or other conditions which would effectively limit their ability to develop the Property and which created an exceptional practical difficulty. Rather, the difficulty is clearly the result of the Applicants' intention to construct a house within the setback areas. The Applicants' argument that, if the Property was 1 square foot smaller, the lot would benefit from the reduced setback requirements of the small lot ordinance also fails because, even in that event, the Applicants proposed dwelling would still encroach into the rear yard setback area.
 - b. The Applicants failed to prove that a reasonably sized dwelling could not be built in strict conformity with the Sussex County Zoning Code. The Applicants propose to construct a new dwelling on this lot and the dwelling will encroach into the rear yard setback area. The Applicants argue that the style of home requires this encroachment but the Applicants failed to demonstrate that there was no other way to reasonably develop the lot without a variance. In this case, the lot is essentially a blank slate upon which the Applicants may develop the lot in compliance with the Code. The Board was simply not convinced that the Applicants could not otherwise place a dwelling on the Property in compliance with the Code. Perhaps the dwelling would not be in the exact location where the Applicants want it to be located but the Property appears to have a large enough building envelope for the Applicants to construct a reasonably sized dwelling in compliance with the Sussex County Zoning Code. For these reasons, the Board finds that the Property could be developed in strict conformity with the Code and that the variance is not necessary to enable reasonable use of the Property.
 - c. The Board finds that the Applicants are creating their own exceptional practical difficulty by proposing to construct a dwelling which does not fit within the building envelope. The Applicants' decision to construct this dwelling in this location is the reason for the need for a variance and has nothing to do with the size, shape, or condition of the Property. There is no unusual condition to the Property which has created this difficulty. The building envelope appears to otherwise be able to fit a dwelling without the need for the variance. The Board was not convinced that the variance request was the product of a *need*. Instead, the variance request appears to be the product of a *want* as the Applicants seek to build the dwelling as proposed for purposes of convenience, profit, and / or caprice. Since the Applicants can build a dwelling that can comply the Sussex County Zoning Code, the need for the variance is something created by the Applicants' wants rather than an unusual physical condition relating to the Property. The Applicants have thus created their own exceptional practical difficulty.

- d. Since the variance is not necessary to enable the reasonable use of the Property, the Board also finds that the variance requested is not the minimum variance necessary to afford relief. Furthermore, the Board finds that no variance is needed to afford relief since there is space to build a reasonably sized dwelling on the Property in compliance with the Sussex County Zoning Code.

The Board denied the variance application 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 denied. The Board Members in favor of the Motion to deny were Dr. Kevin Carson, Mr. Jeffrey Chorman, Ms. Ellen Magee, and Mr. John Williamson. Mr. Brent Workman voted against the Motion to deny the variance application.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY



Ellen M. Magee
Chair

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

Date March 3, 2020