

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

**IN RE: SANDHILL REAL ESTATE INVESTMENTS, LLC**

**(Case No. 12488)**

A hearing was held after due notice November 2, 2020. The Board members present were: Ms. Ellen Magee, Mr. Brent Workman, Dr. Kevin Carson, Mr. Jeff Chorman and Mr. John Williamson.

Nature of the Proceedings

This is an application for a blanket variance from the front yard setback requirements (Sections 115-25 and 115-82 of the Sussex County Zoning Code) for certain lots within the AR-1 subdivision known as the Estates of Sandhill Valley (the "Development").

Findings of Fact

The Board found that the Applicant is requesting a variance of five (5) feet from the twenty-five (25) foot front yard setback requirement for lots 7-83, 93-177, 190-243, 309-350 and 360-393 within the AR-1 residential subdivision development known as the Estates at Sandhill Valley. This application pertains to certain real property located at the intersection of Huff Road and Vines Avenue; said properties being identified as Sussex County Tax Map Parcel Numbers 135-10.00-212.00-288.00, 298.00-382.00, 395.00-448.00, 459.00-506.00 and 565.00-598.00. After a hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a site plan of the Development dated August 2020, a portion of the tax map of the area, house placement diagrams showing house placements upon lots within the Development "Before" and "After" the variance and depictions of the various homes and their floorplans within the Development.
2. The Board found that the Office of Planning and Zoning received no letters in support of the Application and no letters in opposition of the Application, and no parties other than the Applicant and its witnesses appeared in favor of the Application and no parties appeared in opposition to it.
3. David Anthony Sposato was sworn in and testified regarding the Application and testified that the property has been in his family for over forty years.
4. Zach Crouch, P.E. was sworn in and testified regarding the Application
5. The Board found that Mr. Crouch testified that the exhibits include a depiction of the two house designs intended for the Development and that they include a screened porch which would extend over the rear setback line of each lot without the requested five-foot variance.
6. The Board found that Mr. Crouch testified that the requested five-foot variance would enable the rear porches to fit within the rear yard setback line.
7. The Board found that Mr. Crouch testified that to compensate for the five-foot reduction in the front yard setback, the Applicant is offering an additional 2.5 feet of space within the side yard setbacks.
8. The Board found that Mr. Crouch testified in a Residential Planned Community ("RPC"), the front setback would be twenty (20) feet, but in an AR-1 cluster subdivision such as this Development, the front yard setback is twenty-five (25) feet.
9. The Board found that Mr. Crouch testified that with the variance, the pervious area and driveway will not be affected and the buildable area will remain the same because of the additional setbacks on each side of the respective lots.



10. The Board found that Mr. Crouch testified that the variance will allow for additional drainage area between the dwellings.
11. The Board found that Todd Hickman was sworn in and testified regarding the Application.
12. The Board found that Mr. Hickman testified that he affirmed the following statements:
  - a. The Development was initially developed during the early 2000 residential “boom” in Sussex County.
  - b. The property is unique because it was designed for a specific type of home when originally planned and approved with unusually wide, but shallow lots.
  - c. A new home builder has purchased the Development and current home designs combined with the desire for outdoor living space will not work within the Development’s current lot configurations without the setback variances.

The variances will not materially alter any part of the Development since the Application just addresses buildable area and that all parking, lot lines, roads, utilities, etc. will remain in their original design and location.
13. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, which the Board finds credible, persuasive, and un rebutted the Board approved the application for the front yard variances within the Development. The findings below further support the Board’s decision to approve the Application.
  - a. The Board found that there are unique physical circumstances or conditions, including shallowness of the lot sizes and shapes that are peculiar to this particular property because in 2008, the Development was designed and approved with shallow lots that only fit a certain type of house product available at that time. Currently, typical home designs intended for this Development will not fit within the lots, which are overly wide, but shallow. A reduction in the front yard setback will permit a wider variety of homes to be constructed upon the lots within the Development.
  - b. The Board found that there are unique physical circumstances that exist, since the large width of these lots is unique within a typical AR-1 cluster subdivision. Had the lots been originally designed and approved with a more typical width and not as shallow, then the variance would not have been necessary.
  - c. The Board found that the Development could not be developed in strict conformity with the Sussex County Zoning Code and that the variance is necessary to enable reasonable use of the Property. Most home designs available for the Development are within 65 to 68 feet in depth. The current buildable depth on each lot in the Development is 65 feet. Without the variance, the Applicant will be unable to construct its home products or include outdoor porches on the rear of the homes.
  - d. The Board found that the exceptional practical difficulty was not created by the Applicant. The Development was designed and approved many years ago with an irregularly wide, but shallow lot design. The current Applicant was not involved in that process. Current home designs cannot be reasonably located within the atypical-shaped lots without the variance.
  - e. The Board found that the unnecessary hardship and exceptional practical difficulty are not being created by the provisions of the Sussex County Zoning Code.
  - f. The Board found that the variance will not alter the essential character of the neighborhood or district where it is located and will not substantially impair the appropriate use of development of adjacent properties, nor be detrimental to the public welfare. This blanket front yard variance merely

shifts the buildable area of each lot five feet towards the front of each lot. It will not be visually apparent from the Development's streets. In addition, there will be greater lot separation achieved from the design of the original Development based upon the additional 2.5 feet of building separation proffered by the Applicant to offset the front yard variance.

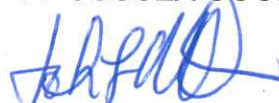
- g. The Board found that five-foot front yard variance sought is the minimum necessary to afford relief and the variance represents the least modification possible of the regulations at issue. The five-foot reduction of the front yard setback from 25 feet to 20 feet is minor in scope, and it is offset by the Applicant's agreement to expand the side yard setbacks by 2.5 feet on each side of the affected lots. This variance will not alter any other part of the Development: the overall density and all parking, lot lines, roads, utilities, etc. will remain in their original design and location.
- h. The condition or situation of the Property and the intended use of the Property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the Sussex County Zoning Code.
- i. This approval is subject to the condition that the side yard setbacks on each of the subject lots within the Development shall be increased to 12.5 feet as proffered by the Applicant.

The Board approved variance application based upon the finding that it satisfied the necessary standards for approval.

#### Decision of the Board

Upon motion duly made and seconded, the front yard variance application was approved with the condition that the side yard setbacks on each of the subject lots within the Development shall be increased to 12.5 feet as proffered by the Applicant. The Board Members in favor were Mr. Workman, Dr. Carson, Mr. Williamson, Ms. Magee and Mr. Chorman voting to approve the Motion to approve the variance application.

BOARD OF ADJUSTMENT  
OF SUSSEX COUNTY



John Williamson  
Acting Chairman

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

Date January 4, 2021.