

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: WOODLANDS DEVELOPMENT, LLC

(Case No. 12577)

A public hearing was held after due notice on June 21, 2021. The Board members present were: Dr. Kevin Carson, Mr. Jeff Chorman, Mr. John T. Hastings, Mr. Jordan Warfel, and Mr. John Williamson.

Nature of the Proceedings

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

Findings of Fact

The Board found that the Applicant is requesting a variance of 8.47 feet from the twenty-five (25) feet front yard setback requirement for a proposed dwelling. This application pertains to certain real located on the north side of Yiana Drive within The Woodlands Subdivision (911 Address: 34165 Yiana Drive, Frankford); said property being identified as Sussex County Tax Map Parcel Number 1-34-19.00-429.00. 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 March 17, 2021, 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 the Application.
3. The Board found that Cynthia McAuliffe and Bryan Elliott were sworn in to give testimony about the Application.
4. The Board found that Mr. Elliott testified that this lot is the last undeveloped lot in this community and the purchaser is an elderly couple who wish to be nearer to their son.
5. The Board found that Mr. Elliott testified that the Property is unique as it is a small odd-shaped lot located on a cul-de-sac.
6. The Board found that Mr. Elliott testified that the building envelope is irregular and restrictive with no uniformity.
7. The Board found that Mr. Elliott testified that the variance is necessary to allow a reasonable use of the Property due to the unique circumstances of the shape of the lot.
8. The Board found that Mr. Elliott testified that the exceptional practical difficulty was not created by the Applicants as they did not create the lot.
9. The Board found that Mr. Elliott testified that the variance will not alter the essential character of the neighborhood but rather enhance the development.
10. The Board found that Mr. Elliott testified that the variance requested is the minimum variance to afford relief and allow for a very small footprint which will match the existing homes in the development. He noted that the only way a house would fit within the building envelope would be to create a custom home that would look out of character for the neighborhood. According to Mr. Elliott, all homes in the neighborhood have been constructed by Insight Homes and there is no smaller model home available.
11. The Board found that Mr. Elliott testified that there are two front yard setbacks on the lot and the setback extends beyond the cul-de-sac along Yianna Drive to the next property.

12. The Board found that Mr. Elliott testified that the only variance required is for the front yard setback.
13. The Board found that Mr. Elliott testified that the lot consists of 8,038 square feet.
14. The Board found that Mr. Elliott testified that there is a gap between the property line and the edge of paving which is typically 10 feet.
15. The Board found that Mr. Elliott testified that this encroachment will not create visibility issues on the cul-de-sac.
16. The Board found that Mr. Elliott testified that no rear yard variance will be needed.
17. The Board found that Mr. Elliott testified that the home will be a two-story home consisting of approximately 1,500 square feet.
18. The Board found that Mr. Elliott testified that homeowner association approval is not required.
19. The Board found that no one appeared in support of or in opposition to the Application.
20. 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 is unique due to its size and shape. The lot is adjacent to a cul-de-sac and has a long and oddly shaped front property line. Due to this odd shape and long property line, the building envelope is greatly limited; particularly on the western side of the lot. Consequently, the Applicant has proposed to construct its smallest model home on the eastern side of the lot. The lot, however, consists of only 8,038 square feet and the home, while modestly sized, cannot entirely fit within the building envelope. A small corner of the front of the home projects into the setback area. The Property has a unique building envelope due to the conditions aforesaid and these conditions have created an exceptional practical difficulty and unnecessary hardship for the Applicant who seeks to construct a new home on the lot.
 - b. The unnecessary hardship and exceptional practical difficulty are not being created by the provisions of the Sussex County Zoning Code.
 - c. Due to the uniqueness of the lot, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property has unique conditions and the buildable area thereof is limited due to these conditions. The Applicant seeks to construct a dwelling but is unable to do so without violating the Sussex County Zoning Code. The Board is convinced that front yard variance is necessary to enable the reasonable use of the Property as the variance will allow the Applicant to construct the modest-sized dwelling.
 - d. The exceptional practical difficulty and unnecessary hardship were not created by the Applicant. The Applicant did not create the unusual conditions of the Property. The lot has an unusual size and shape which have resulted in a limited building envelope on the Property and the small and oddly shaped building envelope has created the exceptional practical difficulty and unnecessary hardship. The unique characteristics of the Property are clear when reviewing the survey and the Applicant's testimony. The Board is convinced that the exceptional practical difficulty and unnecessary hardship were not created by the Applicant but were created by the lot's unique characteristics.
 - e. The 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 Board is

convinced that the variance will have no effect on the character of the neighborhood. The variance will allow the Applicant to construct a reasonably sized home on the lot. The home will be similar to other homes in the neighborhood and the encroachment will only be for a small portion of the home adjacent to a cul-de-sac. There was no evidence that the variance would somehow alter the essential character of the neighborhood or be detrimental to the public welfare.

- f. The 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 variance sought will allow the Applicant to construct a modest-sized home on the lot which will be consistent with other homes in the neighborhood. The Board notes that the home is the smallest model available to the Applicant the encroachment is minimal.
- g. 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.

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 Dr. Kevin Carson, Mr. Jeffrey Chorman, Mr. Travis Hastings, Mr. Jordan Warfel, and Mr. John Williamson. No Board Member voted against the motion to approve Application.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY



John Williamson
Chair

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

Date September 13, 2021