

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: SAWMILL WOODS, LLC

(Case No. 12619)

A hearing was held after due notice on November 1, 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 side yard setback requirement for a proposed dwelling.

Findings of Fact

The Board found that the Applicant is requesting a variance of 9.6 feet from the fifteen (15) feet side yard setback requirement on the southeast side for a proposed dwelling. This property is located on the east side of Holly Oak Drive within the Sawmill Woods Subdivision (911 Address: 23591 Holly Oak Drive, Milton) said property being identified as Sussex County Tax Map Parcel Number 235-24.00-243.00. After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a survey of the Property dated August 31, 2021, schematics for the proposed dwelling, a subdivision plan dated November 13, 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 or in opposition to the Application.
3. The Board found that Jordan Ashburn was sworn in to testify about the Application.
4. The Board found that Mr. Ashburn testified that this property has a very unique shape and is located at the end of the subdivision on a cul-de-sac.
5. The Board found that Mr. Ashburn testified that the property line follows a wetland delineation line but no wetlands are located on the property. He noted that the property slopes significantly towards the wetlands.
6. The Board found that Mr. Ashburn testified that the lot is a difficult lot to develop and that variance is being requested for the rear corner for a new house.
7. The Board found that Mr. Ashburn testified that the adjacent property is a wooded area that will not be developed and the parcel to the right is a dry pond so granting this variance would not encroach on any neighbors.
8. The Board found that Mr. Ashburn testified that the proposed dwelling will look similar to the other houses in this development but, if the variance were not approved, a deep, narrow house would have to be designed which would not be in character with the existing homes in this development. He believes that such a home would stick out since other homes in the neighborhood are 50 feet wide.
9. The Board found that Mr. Ashburn testified that a well and septic system will be installed when construction begins. He testified that the septic drain field cannot be located elsewhere and its location limits where the house can be located.
10. The Board found that Mr. Ashburn testified that all steps and HVAC will be placed in compliance with the Code and most of the house will comply with the Code. He testified that only a small, triangular corner of the house will encroach into the setback area.
11. The Board found that Mr. Ashburn testified that the house will consist of approximately 1,900 square feet with a two-car garage.
12. The Board found that Mr. Ashburn testified that the property line ends at the edge of pavement and there is a swale in the front yard.

13. The Board found that Mr. Ashburn testified that homeowner association approval is not necessary as the association has not yet been formed and he is the developer.
14. The Board found that Mr. Ashburn testified that this development was purchased at a sheriff's sale and that another developer designed the lots.
15. The Board found that William Walters, Renee Angil, and Douglas Bosley were sworn in to give testimony in opposition to the Application. They each own lots within Sawmill Woods.
16. The Board found that Mr. Walters testified that there are drainage issues in the entire development and the pond is not as full because there are drainage issues in the community. He believes that, if the drainage system worked, the storm water management pond would not be a dry pond.
17. The Board found that Ms. Angil testified that the area next to the proposed dwelling is a dry pond but that, when the drainage issues are corrected, the pond will be full.
18. The Board found that Ms. Angil testified that this is open space for people to walk around the pond and walk their dogs and that they are paying for open space.
19. The Board found that Ms. Angil testified that there is poor grading and drainage in the neighborhood and the house on the lot will affect drainage.
20. The Board found that Ms. Angil testified that she moved into the community in May 2021 and the swales have been wet since that time.
21. The Board found that Mr. Bosley testified that the lot is too oddly shaped to be developed with a dwelling and that the land there is needed for drainage.
22. The Board found that Mr. Ashburn testified that there are drainage issues in the development but he is working with Sussex Conservation District to correct the drainage. He noted that the Conservation District put a shallow slope on the swales and the swales are oddly designed but were approved.
23. The Board found that Mr. Ashburn testified that, before the turnover to the homeowners, he will meet with the Conservation District and take remedial measures.
24. The Board found that Mr. Ashburn testified that the subject property will be developed with a dwelling.
25. The Board found that Mr. Ashburn testified that there will not be a swale between Ms. Angil's property and the subject property.
26. The Board found that Mr. Ashburn testified that there is a slope towards the rear of this property and the land drops off significantly.
27. The Board found that Mr. Ashburn testified that the stormwater management pond was designed to be a dry pond.
28. The Board found that Mr. Ashburn testified that 15 homes are constructed in the neighborhood and there are 2 more homes left to be built. He noted that this proposed dwelling is under contract.
29. The Board found that Mr. Ashburn testified that the stormwater pond is entirely on the neighboring lot and that the Conservation District would not approve a stormwater pond on a residential lot.
30. The Board found that Mr. Ashburn testified that there is an access easement on the property and the easement on the property also limits the buildable area.
31. The Board found that no one appeared in support of and five people appeared in opposition to the Application.
32. 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 for the variance met the standards for granting a variance. The findings below further support the Board's decision to approve the Application for the variance.
 - a. The Property is unique due to its size, shape, and topography. The lot borders a wetland delineation line and is oddly shaped. The Property is also adjacent to wetlands and slopes towards those wetlands. Since the

Property will use a septic system, much of the rear portion of the lot is used for a septic drain field and this effectively limits a large portion of the already limited building envelope. Moreover, the front of the lot is adjacent to a cul-de-sac and is burdened by an access easement. These conditions have created a limited and unusually shaped building envelope and these conditions have created an unnecessary hardship and exceptional practical difficulty for the Applicant who seeks to construct the dwelling on the site.

- 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 and situation, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property has unique physical characteristics and the buildable area thereof is limited due to those characteristics. The Applicant seeks to construct the dwelling on the Property 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 variance will allow the Property to be developed with a reasonable dwelling that is consistent with the other houses in the community. 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.
- d. The unnecessary hardship and exceptional practical difficulty were not created by the Applicant. As previously stated, the Property has unique conditions and these conditions have resulted in a limited building envelope of the Property. The Applicant also did not create the shape and topography of the lot. Rather, the lot was designed by a prior owner. The Applicant was further limited by the location of the septic system and the lot's unique topography and the access easement. These conditions have created the unnecessary hardship and exceptional practical difficulty.
- 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 structure will have no effect on the character of the neighborhood. The neighbors in opposition complained of drainage problems but those issues appear to be related to general swale issues in the community. The Board was not convinced that the construction of this dwelling and the small portion of the dwelling that will encroach into the setback area somehow alters the essential character of the neighborhood. The Property is designed for a dwelling to be placed thereon but it was clear to the Board that at least one member of the opposition did not want to see any house placed on the lot. There was no substantial evidence which convinced the Board that the proposed dwelling and the small encroaching portion thereof would somehow alter the essential character of the neighborhood. The Board notes that only the rear corner of the dwelling will encroach into the setback area. Moreover, the design of the house will be consistent with the character of other homes in the neighborhood.
- 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 reasonably sized home on the lot which is consistent with other homes in the neighborhood. The Applicant was significantly constrained by the unique conditions of the lot and the Board finds that the Applicant took reasonable measures to minimize the need for the variances. Notably, only a small corner of the house will

encroach and other structures – such as steps and HVAC systems – will not encroach into the setback area.

- 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 of the Motion to approve the variance were Dr. Kevin Carson, Mr. Jordan Warfel, and Mr. John Williamson. Mr. Jeffrey Chorman and Mr. Travis Hastings voted against the Motion to approve the variance 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 January 24, 2022.