

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

**IN RE: EVERGREENE HOMES**

**(Case No. 12622)**

A public 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, and Mr. John Williamson.

Nature of the Proceedings

This is an application for variances from the front yard setback requirement for a proposed dwelling.

Findings of Fact

The Board found that the Applicant is requesting a variance of 5 feet from the thirty (30) feet front yard setback requirement for a proposed dwelling and a variance of 4.26 feet from the thirty (30) feet front yard setback requirement for a proposed dwelling. This application pertains to certain real located on the west side of Maple Lane within the Keen-Wik Subdivision (911 Address: 38356 Maple Lane, Lot 41, Selbyville); said property being identified as Sussex County Tax Map Parcel Number 5-33-19.16-37.00 (Lot 41). After a public hearing, which was heard as a consolidated hearing with Case No. 12623, 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 September 7, 2021, a lot line reinstatement plan dated September 7, 2021, a lot line reinstatement plan dated September 8, 2021, letters in opposition to the request, a portion of the restrictive covenants for Keen-Wik, a map showing other front yard variances approved on Maple Lane, a picture of Maple Lane, and a portion of the tax map of the area.
2. The Board found that the Office of Planning & Zoning received no letters in support of the Application and three letters in opposition to the Application.
3. The Board found that Tim Naughton was sworn in to give testimony about the Application. James Fuqua, Esquire, appeared on behalf of the Applicant.
4. The Board found that Mr. Fuqua stated that the Applicant owns Lots 41 and 42 Keen-Wik Development and that the Applicant intends to construct houses on both lots. This application only pertains to Lot 41.
5. The Board found that Mr. Fuqua stated that the Property is located on the west side of a dead-end street close to the end of Maple Lane.
6. The Board found that Mr. Fuqua stated that granting these variances will not create traffic issues.
7. The Board found that Mr. Fuqua stated that the Property is bordered by a lagoon in the rear.
8. The Board found that Mr. Fuqua stated that Keen-Wik was developed before Sussex County Zoning Code was enacted and the development consists of small, non-conforming lots.
9. The Board found that Mr. Fuqua stated that Lot 41 consists of 5,818 square feet with approximately 49 feet of frontage on Maple Lane and Lot 42 consists of 6,000 square feet with approximately 49 feet of frontage on Maple Lane.
10. The Board found that Mr. Fuqua stated that, in order to construct the home with a reasonable square footage similar to other homes in the area, the Applicant requests front yard variances.



11. The Board found that Mr. Fuqua stated that Keen-Wik's covenant restrictions require a 25 foot front yard setback and a 20 foot rear yard setback.
12. The Board found that Mr. Fuqua stated that, in 1970 when the Zoning Code was adopted, the County set a 30 feet front yard setback and a 10 foot rear yard setback for lots in the Medium Residential Zoning District.
13. The Board found that Mr. Fuqua stated that the lots in Keen-Wik are required to meet the restrictive covenants and the County setbacks which created a squeeze on the lots.
14. The Board found that Mr. Fuqua stated that this difficulty has been recognized by the Board on previous occasions and there have been approximately 32 variances granted in Keen-Wik in the past 10 years and 6 variances for properties along Maple Lane have been granted since 2014.
15. The Board found that Mr. Fuqua stated that the Property is unique due to the small size of the lot and the impact of the private and the County setback restrictions.
16. The Board found that Mr. Fuqua stated that the variances are necessary to enable the reasonable residential use of the lot for the construction of an appropriately sized home.
17. The Board found that Mr. Fuqua stated that the need is directly related to the small lot size and to the increased 20 feet rear yard setback requirement.
18. The Board found that Mr. Fuqua stated that the exceptional practical difficulty was not created by the Applicant as the lot size was created when the subdivision was created and the additional 20 feet rear yard setback was created by the subdivision restrictions.
19. The Board found that Mr. Fuqua stated that the variances will not alter the essential character of the neighborhood as there are similar variances which have been granted within the subdivision.
20. The Board found that Mr. Fuqua stated that the variances are the minimum for the proposed homes and for the reasonable use of the lots.
21. The Board found that Mr. Fuqua stated that the homes designed for these lots have been reduced to meet the Keen-Wik's 20 feet rear yard setback and 25 feet front yard setback.
22. The Board found that Mr. Fuqua stated that, in one of the letters of opposition, parking was mentioned as a reason for not granting the variance.
23. The Board found that Mr. Fuqua stated that parking will not be an issue because the house will be raised and there will be four parking spaces on the lot.
24. The Board found that Mr. Naughton affirmed that the statements made by Mr. Fuqua as true and correct.
25. The Board found that Mr. Naughton testified that the home will consist of approximately 2,500 square feet, which is similar to the size of other homes in the neighborhood.
26. The Board found that Mr. Naughton testified that the house design is one that is specific for small lots.
27. The Board found that Mr. Naughton testified that there was a large tree between the lots.
28. The Board found that Mr. Naughton testified that the home will consist of two-stories on top of pilings.
29. The Board found that Mr. Naughton testified that homeowner association approval will be sought if the variances are approved by the Board.
30. The Board found that Mr. Fuqua stated that there is some area between the lot line and the edge of paving but the area has not been measured. He noted that Maple Lane is a 50 foot wide right-of-way but the road itself is not 50 feet wide and he estimated that Maple Lane is 20 feet wide.



31. The Board found that Mr. Fuqua submitted picture to Board members showing the placement of telephone poles on the lots and he stated that they are quite a distance from the edge of paving.
32. The Board found that no one appeared in support of or in opposition to the Application.
33. 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 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 the size and shape of the lot and the homeowner association restrictions. The Property consists of only 5,818.98 square feet and is narrow. The lot is also subject to restrictive covenants which limit construction to the rear of the yard. These conditions have created an unusually shaped and limited building envelope. There is also a large tree near the shared border with Lot 42 which limits the developability on the side of the lot. The unique conditions of the lot and the homeowner association restrictions have created an unnecessary hardship and exceptional practical difficulty for the Applicant who seeks to construct a reasonably sized dwelling 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 Property and the situation, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Applicant seeks to construct a reasonably sized dwelling on the lot but is unable to do so while complying with the Sussex County Zoning Code. The Board is thus convinced that the variances are necessary to enable the reasonable use of the Property as the variances will allow the Applicant to construct the reasonably sized home on the lot. The house will be similar in size to other homes in the neighborhood. The Board is convinced that the size, shape, and location of the house are reasonable.
  - d. The unnecessary hardship and exceptional practical difficulty were not created by the Applicant. As discussed above, the Property has unique conditions which have limited the Applicant's ability to reasonably develop the Property. The Applicant did not create the unique conditions of the lot or create the homeowner association restrictions. The Board was convinced that the Applicant has not created the exceptional practical difficulty and unnecessary hardship. Furthermore, the Board is convinced that the Applicant did not come to the Property with an illegal use in mind. Rather, the Applicant is limited by the physical conditions of the Property and the homeowner association restrictions and the Applicant needs the variances in order to construct a reasonable dwelling on the lot.
  - e. 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 Board is convinced that the variances will have no effect on the character of the neighborhood. The variances will allow the Applicant to construct a reasonably sized home. The Board finds that no substantial evidence was presented which convinced the Board that the variances would somehow alter the essential character of the neighborhood or be detrimental to the public welfare. The opposition cited concerns about parking and traffic. The Applicant has demonstrated that the house will be elevated and will allow for 4 parking spaces on the lot. The Board also notes that the front property line does not match the edge of paving so the front yard appears larger than

it actually is. As a result, the encroachment of the dwelling into the front yard setback is not as noticeable. The impact on traffic should thus be minimal. Furthermore, other structures along Maple Lane, which is a dead-end street, are also located a similar distance from Maple Lane.

- f. 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 Applicant has demonstrated that the variances sought will allow the Applicant to construct the dwelling on the Property. The dwelling is a modest size and will comply with the restrictive covenants. The dwelling will also not encroach onto the areas where a large, existing tree is located.
- 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, and Mr. John Williamson. Mr. Jordan Warfel voted against the motion to approve the 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.