

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: BRIAN REILLY & SARAH REILLY

(Case No. 12628)

A hearing was held after due notice on November 15, 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 variances from the front yard setback requirement for a proposed dwelling.

Findings of Fact

The Board found that the Applicants are requesting a variance of 24.2 feet from the thirty (30) feet front yard setback requirement for a proposed dwelling. This application pertains to certain real property located at the southeast side of Louisiana Avenue approximately 365 feet southwest of North Bay Shore Drive (911 Address: 107 Louisiana Drive, Milton); said property being identified as Sussex County Tax Map Parcel Number 235-3.16-12.00 (hereinafter "the Property"). 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 November 9, 2021, an existing on-site wastewater system inspection report, a septic plot plan dated June 29, 2006, a septic permit, drawings of the proposed dwelling, variance application for Case No. 9113, findings of fact for Case No. 9113, 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 Brian Reilly, Sarah Reilly, and Thomas Head were sworn in to give testimony about the Application.
4. The Board found that Mr. Reilly testified that the Applicants have moved to this area to be near family and were looking for a house and found this lot.
5. The Board found that Mr. Reilly testified that there are houses on either side of the subject property.
6. The Board found that Mr. Reilly testified that there are federal wetlands on the rear of the property and there is an existing septic system located in the center of the lot.
7. The Board found that Mr. Reilly testified that the dimensions of the house are similar to the dwelling proposed in Case No. 9113. The approval for Case No. 9113, however, expired.
8. The Board found that Mr. Reilly testified that the lot is 50 feet wide and the proposed dwelling will measure 30 feet wide. He noted that the only variance being sought is from the front yard setback requirement. Mr. Head testified that the site plan incorrectly shows the house as being 32 feet wide. Mr. Head confirmed the actual width of the proposed dwelling as 30 feet and will meet the side yard setback requirements.
9. The Board found that Mr. Reilly testified that there is a mixture of empty lots and some improved lots in the neighborhood.
10. The Board found that Mr. Reilly testified that there have been no complaints from the neighbors about the proposal.
11. The Board found that Mr. Head testified that there is a difference between the 2005 application and this application which is due to the stone bed of the septic system.

12. The Board found that Mr. Head testified that the new survey shows the house will not interfere with the septic system and that the house was designed to be 10 feet from the septic system.
13. The Board found that Mr. Head testified that the house has been designed with no external staircases that would further encroach into setbacks.
14. The Board found that Mr. Head testified that, in order to comply with the setback requirements, the Applicants could only build a house measuring 4 feet by 30 feet because of the wetlands and the location of the septic system. He believes that the only way the Property is buildable is with a front yard variance.
15. The Board found that Mr. Head testified that the house will be built on pilings at an 8 feet height to allow for parking under the dwelling and that neighboring houses are located on pilings as well.
16. The Board found that Mr. Head testified that the wetlands are located to the rear of the septic system.
17. The Board found that Mr. Head testified that the septic is not a mound system but a peatmoss system.
18. The Board found that Mr. Head testified that only one or two other houses will use that road.
19. The Board found that Ms. Reilly testified that Louisiana Drive is a dead-end side street off North Bay Shore Drive with very little traffic.
20. The Board found that no one appeared in support of or in opposition to the Application.
21. 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 as it is a small lot that consists of only 5,000 square feet and is burdened by wetlands to the rear of the lot and a septic system in the center of the lot. These unique conditions greatly limit the buildable area of the lot and it is clear to the Board that the lot's unique characteristics have created an unnecessary hardship and exceptional practical difficulty for the Applicants who seek 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 lot, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property is a small lot and is limited by the wetlands and septic system. The Applicants seek to construct a reasonably sized house on the Property but are unable to do so without violating the Sussex County Zoning Code. The Board is convinced that the variance is necessary to enable the reasonable use of the Property as the variance will allow the Applicants to construct a house on the Property. The Board is convinced that the shape and location of the house are also reasonable, which is confirmed when reviewing the survey provided by the Applicants.
 - d. The exceptional practical difficulty and unnecessary hardship were not created by the Applicants. The Applicants did not create the lot, place the septic system, or create the wetlands. Those conditions have limited the building envelope of the lot, which is an already small lot. The unique characteristics of the Property are clear when reviewing the survey. The Board is convinced that the unnecessary hardship and exceptional practical difficulty were not created by the Applicants but were created 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 dwelling will have no effect on the character of the neighborhood. The dwelling will be similarly situated to other structures in this neighborhood. There was no evidence that the structures would present visibility concerns along Louisiana Avenue. The testimony also reflects that Louisiana Avenue is a lightly traveled, dead-end road so the impact on traffic should be minimal. Furthermore, no evidence was presented which would indicate 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 Applicants have demonstrated that the variance sought will allow the Applicants to construct a reasonably sized dwelling on the lot. The Board notes that the Applicants were constrained by the unique conditions of the lot and have limited the size of the home to minimize the variances requested. Furthermore, the dwelling will be raised but steps will be located under the house to further minimize encroachments.
- 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 were Dr. Kevin Carson, Mr. Jeffrey Chorman, Mr. Travis Hastings, Mr. Jordan Warfel, Mr. John Williamson. No Board Member 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.