

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY
IN RE: CHRISTOPHER AT THE TOWNES AT WINWARD VILLAGE, LLC
(Case No. 12690)

A hearing was held after due notice on May 16, 2022. 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 minimum lot width requirement.

Findings of Fact

The Board found that the Applicant is requesting the following variances:

1. A variance of 65.49 feet from the 150 feet lot width requirement for a proposed Lot 3;
2. A variance of 66 feet from the 150 feet lot width requirement for a proposed Lot 2; and
3. A variance of 74 feet from the 150 feet lot width requirement for a proposed Lot 1.

This application pertains to certain real property located on the west side of Kent Avenue approximately 0.03 miles from Westway Drive (911 Address: 33309 Kent Avenue, Bethany Beach); said property being identified as Sussex County Tax Map Parcel Number 134-17.11-6.00 ("the Property"). 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 letter and exhibits from Mackenzie Peet, Esquire, a survey of the Property dated December 6, 2021, a site plan dated March 1, 2022, an Artesian Water Company plan dated January 22, 2021, and a portion of the tax map of the area.
2. The Board found that the Office of Planning & Zoning received one (1) letter in support of and twenty-six (26) letters in opposition to the Application.
3. The Board notes the variances sought are for a proposed 3 lot subdivision as shown on a plan dated March 1, 2022, which identifies the three lots as Proposed Lots 1, 2, and 3.
4. The Board found that Ronald Sutton, who is the Applicant's engineer, and Rick Normoyle, were sworn in to testify about the Application.
5. The Board found that Mr. Sutton testified that he has been working on this project with his client for some time and, that, in December 2021, the Applicant submitted a plan for ten (10) condos on the Property but the Applicant received an unfavorable recommendation from the Planning and Zoning Commission and withdrew the application. He noted that the Applicant then changed its plan to a 3 lot subdivision but learned that the lot width requirement for these lots is 150 feet because the Property fronts on Road 361, which is a numbered road.
6. The Board found that Mr. Sutton testified that the majority of unnumbered roads are subdivision streets.
7. The Board found that Mr. Sutton testified that they are requesting the variances due to those unique qualities of the Property and so they can create three (3) smaller lots.
8. The Board found that Mr. Sutton testified that, without the variances, the Property will remain a motel or the Applicant will file an application through the Planning and Zoning Commission for a four (4) unit condo regime.

9. The Board found that Mr. Sutton testified that the Applicant feels the public comments indicated that neighbors do not want condominiums next to them even though there are already existing condos nearby. He believes that the three (3) smaller, fee simple lots would be a better option.
10. The Board found that Mr. Sutton testified that his client purchased the motel on 2021, with the preferred intention of placing 10-11 condos on the Property.
11. The Board found that Mr. Sutton testified that developing the Property as one lot will not work for their proposal.
12. The Board found that Mr. Sutton testified that the existing motel sits about 3 feet off the rear property line and is a single story structure and that the Property also has paving and numerous smaller structures. He noted that the motel is dilapidated and would be costly to repair.
13. The Board found that Mr. Sutton testified that the Applicant would use the existing driveways for the three (3) proposed single family units.
14. The Board found that Mr. Sutton testified that the only zoning requirement they do not meet is the footnote requirement of 150 feet lot frontage on lots fronting on a numbered road.
15. The Board found that Mr. Sutton testified that these variances would not change the essential character of the neighborhood as there are a host of lots to the north of the Property that have less than 150 feet of road frontage with lots ranging in many different size frontage from 60.5 feet to 103 feet.
16. The Board found that Mr. Sutton testified that the Applicant is trying to fit the character of the neighborhood and appease the current residents and that the requested variances are the minimum variances necessary.
17. The Board found that Mr. Sutton testified that he has not researched the lots near this one to see if they created were prior to 1964.
18. The Board found that Mr. Sutton testified that they would potentially be building three (3) 3,000 square foot homes of higher-end quality and they are proposing three (3) lots to be sold separately with builder tie-in. He also noted that the homes built on the lots will be custom homes.
19. The Board found that Mr. Sutton testified that one (1) lot would have its own driveway and the other two (2) lots would have a shared driveway and that they would be using existing driveway accesses to limit the impact on the neighborhood.
20. The Board found that Mr. Sutton testified that the driveway curls around and has a double entrance but there would be an easement to allow one property entrance.
21. The Board found that Mr. Sutton testified that the only additions would be two (2) additional meters and two (2) additional sewer cleanouts.
22. The Board found that Mr. Sutton testified that the motel has not been functioning for a few years.
23. The Board found that Mr. Normoyle testified that the parcel is unique as it is tucked in next to Sea Colony.
24. The Board found that Mr. Normoyle testified that, at this point, when you drive by the motel, it is a dilapidated property with doors that have been kicked in and disarray within the rooms inside and that the exterior is unkempt.
25. The Board found that Mr. Normoyle testified that, as a company, the Applicant targets properties in need so that they can make their mark and improve upon the area.
26. The Board found that Mr. Normoyle testified that, in trying to keep with the neighborhood, they previously looked to match with the townhomes nearby but, after a town hall they hosted for the adjacent property owners and feedback received from 20-25 individuals, they decided to alter their proposal before the Planning and Zoning Commission. He noted that they reduced the number of units, adjusted parking, and added landscaping but that project came to a halt due to it not fitting the character of the community of Bethany Beach.

27. The Board found that Mr. Normoyle testified that they have created a couple of single family dwelling concepts with 3,000 to 4,000 square foot homes that do not have to be just vacation homes but have first-floor living. He believes that these homes more represent the current homes in Bethany Beach and that the proposed is a "night and day difference" from what is currently on the Property.
28. The Board found that Mr. Sutton testified that the Property is large but does not have the road frontage they need to create three (3) lots with 150 feet frontage.
29. The Board found that Mr. Sutton testified that they have twice the depth required and are proposing 40% more square footage of lot size than what is required.
30. The Board found that Mr. Sutton testified that the area is there but they are just restricted by the road frontage.
31. The Board found that Mr. Sutton testified that he understands the traffic concerns and that the road is busy during the summer months but they will not be changing any access points to the Property.
32. The Board found that Mr. Sutton testified that they will actually be removing a lot of pavement and improvements that have been done to the Property and they will have less impervious surfaces and drainage will be improved. He also noted that there are swales on each side of the Property and that less runoff will come from this property due to the reduced impervious surface area.
33. The Board found that Mr. Sutton testified that they conducted a survey of the trees on the Property and, due to existing buildings, are able to keep as much as possible. He believes that they may only need to remove a few small trees.
34. The Board found that Mr. Sutton testified that the lot shape has created the practical difficulty, because they have the area, just not the frontage required to create the three (3) lots.
35. The Board found that Mr. Normoyle testified that, when the motel was functioning it has fourteen (14) active rooms with a large parking lot. He noted that the motel has not been operational since the Covid-19 pandemic and has not been actively rented in a few years.
36. The Board found that Mr. Normoyle testified that they had no plans to change the current driveway formations.
37. The Board found that Mr. Normoyle testified that the variances are the minimum variances.
38. The Board found that Mr. Normoyle testified that he does not see what is proposed as a hindrance for drainage compared to what is currently there.
39. The Board found that Mr. Normoyle testified that there are lots on Jefferson Bridge Road that have taller homes on 50 feet wide lots.
40. The Board found that Mr. Normoyle testified that the existing motel is 3 feet off the rear property line.
41. The Board found that Mr. Normoyle testified that they will not be removing all the trees, as they have talked about strategic placement of the homes, to keep as many trees in place as possible.
42. The Board found that Thomas Fise and Andrew Beck were sworn in to give testimony in opposition to the Application.
43. The Board found that Mr. Fise testified that he and his wife have owned an adjacent property for thirty-two (32) years and that their property, which is located on Argyle Lane, is 20 feet from the proposed lot.
44. The Board found that Mr. Fise testified that the limitations of the Property were made to clear to the current owner when the Applicant purchased the Property.
45. The Board found that Mr. Fise testified that the traffic problems in the area are profound and that the Property is almost directly across the street from the entrance to Sea Colony.
46. The Board found that Mr. Fise testified that the lots in the immediate vicinity have minimum lot sizes ranging from 92.5 feet up to 460 feet and that there is one (1)

lot that fronts on Kent Avenue that is 85 feet of frontage but he is not aware of any lot that is 60 feet wide.

47. The Board found that Mr. Fise testified that, should this be approved, each of these lots would be smaller than that of what is currently existing on Kent Avenue.
48. The Board found that Mr. Fise testified that the Property could be developed in a number of other ways with no variance for one lot or with less variances needed for smaller lots.
49. The Board found that Mr. Fise testified that substantively and procedurally they urge that the variances be denied in order to preserve the essential character of the neighborhood.
50. The Board found that Mr. Fise testified that it seems that the Applicant wishes the Code were different than what it is.
51. The Board found that Mr. Fise testified that the neighborhood on Kent Avenue and the neighborhood on adjoining streets are very different.
52. The Board found that Mr. Beck testified that, since 1976, he has been in the area of the proposed lots and he has an extensive history within the neighborhood.
53. The Board found that Mr. Beck testified that Evergreen Homes, a competitor of the Applicant, has been making their lives miserable by purchasing up lots in the area and by clear-cutting the lots and filling them. He noted that there have been drainage issues recently due to construction and that they have had a huge problem with builders as of lately.
54. The Board found that Mr. Beck testified that the homes being built in the neighborhood are homes that look like they were printed from a 3-D printer and placed on the site. He does not believe that the homes they produce fit the character of the neighborhood, which are one (1) story homes that are low to the ground.
55. The Board found that Mr. Beck testified that the developers are removing all the trees and the name should be changed from Ocean Pines Lane to Ocean Pineless Lane.
56. The Board found that Mr. Beck testified that the Applicant paid \$1.2 million for the Property and that he has been through the Code several times and has never seen where it states that a variance should be granted because the owner paid too much money for the land.
57. The Board found that Mr. Normoyle testified that he understands the frustrations which seem to be more directed at Evergreen Homes and how they have changed the feel for the area but they are not the same builder and their product is different.
58. The Board found that Mr. Normoyle testified that he has driven past the homes they speak of and see how they fill up the lot and that what is proposed is completely different than what the opposition is referencing. He noted that the proposed homes will not be placed on pilings as the lots are too wide and they would look out of place.
59. The Board found that Mr. Normoyle testified that they are based out of Virginia but have been building in Sussex County for twelve (12) years and that they know the market well and have placed 300-400 homes on the market.
60. The Board found that Mr. Normoyle testified that the Applicant believes this project will be a great addition to the surrounding area.
61. The Board found that Mr. Normoyle testified that they are not filling the building envelope but will have 50-60 feet open behind each dwelling.
62. The Board found that Mr. Sutton testified that there is a lot on Jefferson Bridge Road that is 60.85 feet wide.
63. The Board found that Mr. Fise testified that there is no 60 foot wide lot on Kent Avenue and that Kent Avenue is a different type of road from other roads in the area.

64. The Board found that no one appeared in support of and 4 people appeared in opposition to the Application.
65. 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 failed to meet the standards for granting a variance. The findings below further support the Board's decision to deny the Application.
- a. The Applicant failed to demonstrate that the Property was unique and that the uniqueness of the Property has created an exceptional practical difficulty. The lot is a rectangular lot measuring with approximately 244 feet of road frontage. There appeared to be no unusual conditions to the Property either. The Applicant seeks to subdivide the Property into 3 lots; all of which will be smaller than required under the Code. In fact, a subdivision into 2 lots would require a variance from the lot width requirement yet the Applicant seeks to subdivide the Property even further. Rather than develop the Property in compliance with the Code or minimize the variances sought, the Applicant has requested to subdivide the Property into 3 lots as proposed; all of which need significant variances. The Applicant did not convince the Board that there was some unique topography or other conditions which would render the Applicant unable to develop the Property in strict conformity with the Code or that those conditions have created an exceptional practical difficulty. Rather, the difficulty is clearly the result of the Applicant's desire to subdivide the Property into 3 lots which are smaller than permitted under the Code. As such, the Applicant has failed to demonstrate that there was some unique condition which has created the exceptional practical difficulty.
 - b. The Applicant's argument appears to also hinge on the provisions of the Sussex County Zoning Code but it is the Applicant's burden to also prove that the unnecessary hardship and exceptional practical difficulty are not being created by the provisions of the Sussex County Zoning Code. The Applicant has failed to meet this burden as it appears there is no uniqueness to the Property. Instead, the Applicant seeks to develop the Code with lots that are smaller than allowed under the Code.
 - c. The Applicant failed to prove that the Property could not be developed in strict conformity with the Sussex County Zoning Code. The Property is a lot that meets the lot width requirements and was previously used as a motel for years. Rather develop the Property in compliance with the Code, the Applicant seeks to subdivide the lot to create 3 undersized lots. It is clear that the Applicant has chosen not to develop the Property in strict conformity with the Code rather than developing the Property to comply with the Code's setback requirements. While the development of the Property in compliance with the Code may not be the Applicant's preference, the Applicant failed to demonstrate that it could not otherwise comply with the Code's requirements. The Applicant is not entitled to develop the Property into 3 lots. For these reasons, the Board finds that the Property could be developed in strict conformity with the Code and that the variances are not necessary to enable reasonable use of the Property.
 - d. The Board finds that the Applicant is creating its own exceptional practical difficulty by proposing to subdivide the Property into 3 lots which do not comply with the Code. The Applicant's decision to subdivide the Property as proposed is the reason for the need for variances and has nothing to do with the size, shape, or condition of the Property. There is no unusual condition to the Property which has created this difficulty. The lot is not irregularly shaped and the Board was not convinced that there was a unique

condition that limits the Applicant's ability to otherwise reasonably develop the lot. The Board was not convinced that the variance requests were the product of a *need*. Instead, the variance requests appear to be the product of a *want* as the Applicant seeks to subdivide the Property as proposed for purposes of convenience, profit, and / or caprice. Since the Applicant can develop the Property in compliance with the Sussex County Zoning Code, the need for the variances is something created by the Applicant's wants rather than an unusual physical condition relating to the Property. The Applicant has thus created its own exceptional practical difficulty.

- e. Since the variances are not necessary to enable the reasonable use of the Property, the Board also finds that the variances requested are not the minimum variances necessary to afford relief.

The Board denied the variance application finding that it failed to meet the standards for granting a variance.

Decision of the Board

Upon motion duly made and seconded, the variance application was denied. The Board Members in favor of the Motion to deny were Mr. Jeffrey Chorman, Mr. Jordan Warfel, and Mr. John Williamson. Dr. Kevin Carson and Mr. Travis Hastings voted against the Motion to deny 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 July 18, 2022