

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: LARA WEATHERSBEE

(Case No. 12700)

A public hearing was held after due notice on June 6, 2022. The Board members present were: 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 proposed structures.

Findings of Fact

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

1. A variance of 14.8 feet from the thirty (30) feet front yard setback requirement for a proposed dwelling; and
2. A variance of 15 feet from the thirty (30) feet front yard setback requirement for a proposed dwelling.

This application pertains to certain real property located on the northwest side of Shady Ridge Drive within the Shady Ridge Subdivision (911 Address: 125 Shady Ridge Drive, Rehoboth Beach); said property being identified as Sussex County Tax Map Parcel Number 334-13.00-580.00 ("the Property"). After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, aerial photographs of the Property, a survey of the Property dated September 1, 2021, an addendum to the Application, a survey of the Property dated April 7, 2017, a letter in support of the Application, the variance application for Case No. 12610, the findings of fact for Case No. 12610, photographs, schematics, and a portion of the tax map of the area.
2. The Board found that the Office of Planning & Zoning received one letter in support of and no correspondence in opposition the Application.
3. The Board found that Laura Weathersbee was sworn in to give testimony about the Application.
4. The Board found that Ms. Weathersbee testified that she has recently purchased this lot but was unaware of the limited building envelope.
5. The Board found that Ms. Weathersbee testified that the Property is unique due to its topography and the fact that approximately 80% of the lot consists of wetlands.
6. The Board found that Ms. Weathersbee testified that the building envelope is very small.
7. The Board found that Ms. Weathersbee testified that a home built in compliance with the setback requirements would be extremely thin and not even as wide as a double-wide mobile home. She noted, however, that, if the setback was reduced to 15 feet, she could have a small single-family home. She proposes that the house will measure 26 feet by 42 feet with porches.
8. The Board found that Ms. Weathersbee testified that there is no ability to keep a backyard but she plans to keep some of a side yard.

9. The Board found that Ms. Weathersbee testified that she did not create the topography or wetlands on the Property.
10. The Board found that Ms. Weathersbee testified that she does not believe that she can develop the Property or build a house without the variance.
11. The Board found that Ms. Weathersbee testified that the Property is located along a dead end street with three (3) undeveloped lots on it.
12. The Board found that Ms. Weathersbee testified that her neighbor is present and supports the Application.
13. The Board found that Ms. Weathersbee testified that the plan for those three (3) undeveloped lots is to turn them into single family homes with her two (2) best friends from college and they plan on constructing homes that are similar in nature.
14. The Board found that Ms. Weathersbee testified that her building envelope would be increased to 35 feet by 55 feet if the variance were granted thereby allowing her to construct a single-family home.
15. The Board found that Ms. Weathersbee testified that the retaining wall is already constructed and there is a 10 foot easement from the pavement of the road to the front property line.
16. The Board found that Ms. Weathersbee testified that the Property was purchased less than a year ago and she was aware of the wetlands but not how limited the building options would be.
17. The Board found that Ms. Weathersbee testified that the three lots adjacent to each other all have a retaining wall.
18. The Board found that Ms. Weathersbee testified that her neighbor has obtained a similar variance.
19. The Board found that Ms. Weathersbee testified that that the home she is proposing would be similar in nature to the homes already existing in the neighborhood.
20. The Board found that Ms. Weathersbee testified that the steps for the porch will be turned to the side.
21. The Board found that Ms. Weathersbee testified that the square footage will be just under 2,000 square feet as a two-story dwelling.
22. The Board found that Ms. Weathersbee testified that she needs a buffer between the retaining wall and the dwelling in the event repairs are needed and to aid in drainage
23. The Board found that one person appeared in support of and no one appeared in opposition to the Application.
24. 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, shape, and topography. The lot consists of 15,432 square feet but 12,711 square feet of the lot is considered undevelopable wetlands. The wetlands are to the rear of the lot so the only buildable area is to the front of the lot and is exceptionally limited. The Property is only 75 feet wide, more or less, in the front yard as well thereby further limiting the developable area. These unique characteristics of this Property have created a limited building envelope and have created an unnecessary hardship and exceptional practical difficulty for the Applicant who seeks to build a reasonable home and porch 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, 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 place a home and porch on the lot 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 variances will allow this reasonably sized home and porch to be placed the lot. The Board is convinced that the shape and location of these structures are also reasonable, which is confirmed when reviewing the survey provided by the Applicant. The Board notes that the home is quite small and the Applicant appears to have taken steps to minimize the need for the variances.

- 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 on the Property. These conditions have created the unnecessary hardship and exceptional practical difficulty.
- 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 structures will have no effect on the character of the neighborhood. The Board received evidence of support for the Application and notes that the proposed dwelling will be similar to other homes in the neighborhood. Moreover, no substantial evidence that the structures would somehow alter the essential character of the neighborhood was presented to the Board. The home is a modest-sized home and appears, based on the testimony, consistent with the neighborhood. There is also a gap between the edge of paving of Shady Ridge Drive and the front property line thereby minimizing the impact of the front yard encroachment.
- f. The variances sought are the minimum variances necessary to afford relief and the variances requested represent the least modifications possible of the regulation at issue. The Applicant has demonstrated that the variances sought will allow the Applicant to place the reasonably sized home and porch on the Property. The Board is convinced that the Applicant explored other options for the size, shape, and location of the structures but was constrained by the conditions of the lot. The proposed placement will also allow the Applicant to have some usable outdoor space since the rear of the Property consists of wetlands. The Board also notes that the structures cannot be placed closer to the retaining wall since there needs to be separation from the retaining wall to allow for maintenance and repairs of that wall.
- 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 Mr. Jeffrey Chorman, Mr. Travis Hastings, Mr. Jordan Warfel, and Mr. John Williamson. No Board Member voted against the motion to approve the Application. Dr. Kevin Carson did not participate in the discussion or vote on this application.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY



Jeffrey Chorman
Chair

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

Date August 1, 2022