

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: C. PRICE FANNING & SHARON G. FANNING

(Case No. 12735)

A public hearing was held after due notice on September 12, 2022. The Board members present were: Dr. Kevin Carson, Mr. Jeffrey 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 requirements for a proposed dwelling.

Findings of Fact

The Board found that the Applicants are requesting the following variances:

1. A variance of 11.8 feet from the thirty (30) feet front yard setback requirement along Cerise Lane for a proposed dwelling;
2. A variance of 15.7 feet from the thirty (30) feet front yard setback requirement along Cerise Lane for a proposed dwelling;
3. A variance of 20.0 feet from the thirty (30) feet front yard setback requirement along Cerise Lane for a proposed dwelling; and
4. A variance of 6.0 feet from the thirty (30) feet front yard setback requirement along Cerise Lane for a proposed dwelling.

This application pertains to certain real property located on the northwest side of Cerise Lane within the Orchard Manor Subdivision (911 Address: 28526 Cerise Lane, Millsboro); said property being identified as Sussex County Tax Map Parcel Number 234-34.12-1.01("the Property"). After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, photographs, a setback information request form, a survey dated October 16, 1986, a survey of the Property dated May 23, 2022, aerial photographs of the Property, a survey of the Property dated May 13, 2004, 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 Charles Fanning and Sharon Fanning were sworn in to give testimony about the Application.
4. The Board found that Mr. Fanning testified that the Property is unique in the respect that part of the lot is a lagoon.
5. The Board found that Mr. Fanning testified that the Applicants are not looking for a garage, shed, or pool but are seeking to build their retirement home.
6. The Board found that Mr. Fanning testified that the variances will not alter the neighborhood.
7. The Board found that Mr. Fanning testified that the footprint of the proposed dwelling is the same footprint as what is existing.
8. The Board found that Mr. Fanning testified that they submitted photos with the stakes indicating the new proposed dwelling in comparison to the existing.
9. The Board found that Mr. Fanning testified that they purchased the home approximately fifteen (15) years ago and the house has been there 30 or 40 years.

10. The Board found that Mr. Fanning testified that the house in front of them is his wife's parents' home.
11. The Board found that Mr. Fanning testified that the Applicants are not getting any younger and are looking to have minimal stairs in the new house. He noted that they are looking for first-floor living and that he has issues with his knees.
12. The Board found that Mr. Fanning testified that there is no garage at the existing or proposed home.
13. The Board found that Mr. Fanning testified that they have attempted to place the dwelling at different angles on the Property but it just does not fit in any other way than proposed.
14. The Board found that Mr. Fanning testified that adjusting the placement of the home would put the steps into the lagoon.
15. The Board found that Mr. Fanning testified that they are planning for the safety of potential grandchildren and going directly into the lagoon from the dwelling.
16. The Board found that Ms. Fanning testified that there are stick-built homes in front of them and manufactured homes behind them.
17. The Board found that Ms. Fanning testified that there will be no stairs facing toward the road and that the stairs will be facing the lagoon.
18. The Board found that Ms. Fanning testified that the side of the house facing the road will be their bedroom.
19. The Board found that Ms. Fanning testified that they have spoken with their neighbors and no one is opposing the Application.
20. The Board found that Ms. Fanning testified that there have been flooding issues which is why they are building a new home.
21. The Board found that Ms. Fanning testified that they will park next to the front porch shown on the plans.
22. The Board found that Ms. Fanning testified that the proposed dwelling is a Cape Cod style home which will consist of around 1,200 square feet and is smaller than the existing home.
23. The Board found that Ms. Fanning testified that the home will be placed far enough from the bulkhead to maintain the integrity as the current dwelling does.
24. The Board found that Ms. Fanning testified that the bulkhead was installed in the 1970s.
25. The Board found that Ms. Fanning testified that the sheds shown on the survey are no longer on the Property and the original dwelling has been removed.
26. The Board found that Ms. Fanning testified that, to maximize the space of the Property, there is no other way to place the dwelling.
27. The Board found that Ms. Fanning testified that the Property narrows on the one (1) side.
28. The Board found that Ms. Fanning testified that the placement of the existing home gives the maximum space on the Property which is why they are using the existing footprint.
29. The Board found that Ms. Fanning testified that there is a strip of grass between the gravel road and the sidewalk which provides enough room for the Applicants to park their cars.
30. The Board found that Jane Roth was sworn in to give testimony in support of the Application.
31. The Board found that Ms. Roth testified that this proposal will be an improvement to the neighborhood.
32. The Board found that one person appeared in support of and no one appeared 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 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 approximately 11,685 square feet but a large portion of the building envelope is considered a lagoon. In fact, the front and rear of the Property are separated by a lagoon. The Property has suffered from flooding and the home has been located away from the lagoon to protect the integrity of the bulkhead and to minimize the risk from flooding. The unique characteristics of this Property have created a limited building envelope and have created an unnecessary hardship and exceptional practical difficulty for the Applicants who seek to build a reasonable home 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 Applicants seek to place a home on the lot but are 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 to be placed on the lot. The Board is convinced that the shape and location of this home are also reasonable, which is confirmed when reviewing the survey provided by the Applicants. The Board notes that the home is small and the Applicants appear to have taken steps to minimize the need for the variances. Notably, steps and decking are located within the building envelope.
- d. The unnecessary hardship and exceptional practical difficulty were not created by the Applicants. 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 structure will have no effect on the character of the neighborhood. No substantial evidence that the structure 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. The home will be located in a similar area to a prior home as well. There is also a gap between the edge of paving of Cerise Lane and the front property line thereby minimizing the impact of the front yard encroachment. The Board also notes that a neighbor appeared in support of the Application.
- 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 Applicants have demonstrated that the variances sought will allow the Applicants to place the reasonably sized home on the Property. The Board is convinced that the Applicants explored other options for the size, shape, and location of the structures but were constrained by the conditions of the lot. The proposed placement will also allow the Applicants to have reasonable access to the home while limiting encroachments into the setback requirements.
- 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, Mr. Jordan Warfel, and Mr. John Williamson. No Board Member voted against the motion to approve the 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 November 7, 2022