

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: CORTNEY HORNE

(Case No. 12769)

A public hearing was held after due notice on December 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 requirement for existing and proposed structures.

Findings of Fact

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

1. A variance of 5.6 feet from the 17.6 feet average front yard setback requirement for a proposed addition; and
2. A variance of 6.8 feet from the 17.6 feet average front yard setback requirement for a proposed garage.

This application pertains to certain real property located on the west side of East Lagoon Road within the Dogwood Acres Subdivision (911 Address: 30835 East Lagoon Road, Dagsboro); said property being identified as Sussex County Tax Map Parcel Number 134-6.00-123.00 ("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 July 31, 2018, an undated survey of the Property, photographs, Findings of Fact for Case Nos. 12211 and 12397, 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 and one (1) letter in opposition to the Application.
3. The Board found that Cortney Horne was sworn in to give testimony about the Application.
4. The Board found that Mr. Horne testified that he purchased the Property last year and he realized that he needed variances after seeking a permit to construct an addition.
5. The Board found that Mr. Horne testified that the existing dwelling needed a variance, which was approved in 2020. He now seeks a variance to make the dwelling longer and that he needs the variance because the front property line is not straight to the road but angled.
6. The Board found that Mr. Horne testified that, according to his architect, there is no other way to build it with the second floor with the stair landing to match up. He noted that, if they moved the addition back and created an "L", it would not line up either. He believes that there is no other way of building the addition without a variance.
7. The Board found that Mr. Horne testified that other properties nearby also encroach into the front yard setback area. He noted that he owns property across the street also.
8. The Board found that Mr. Horne testified that the street is not straight.

9. The Board found that Mr. Horne testified that the street is 2 feet on his property on one side of the street and not where it should be on the other side of the street. He noted that, from his house to the edge of the street, is 23.1 feet and that the street is 26 feet wide.
10. The Board found that Mr. Horne testified that there is a right-of-way that is 30 feet wide and that everything in front of the property is grass which is his responsibility to maintain. He noted that, when he first moved in, the inspector came by and told them to cut the grass and that it was their responsibility to maintain it so he is responsible of maintaining up to the road though he does not own that area.
11. The Board found that Mr. Horne testified that he believes, when the house was built, they did corner pin to corner pin and drew a straight line but the Property was formerly multiple lots and had a pin in between the corner pins, which did not have a straight front property line and led to the discrepancy.
12. The Board found that Mr. Horne testified that the parcel was created by consolidating three lots into one lot.
13. The Board found that Mr. Horne testified that he intends to remove the guest house.
14. The Board found that Mr. Horne testified that the rear of the garage is 27 feet from the back of the property line on the right side of the Property.
15. The Board found that Mr. Horne testified that the garage will measure 38 feet by 30 feet and will be elevated with concrete.
16. The Board found that Mr. Horne testified that the addition to the house will measure 24 feet by 20 feet and will consist of 2 stories to add 2 bedrooms to the home.
17. The Board found that Mr. Horne testified that he has four children and the bedrooms in the house are currently the size of a closet. He noted that he is trying to make some more room for their kids but he cannot build the addition in any other way as the stairway will not line up.
18. The Board found that Mr. Horne testified that, if he was to move the addition back, he would have to remove the retaining wall but that would create its own issues because they are using the existing hallway, which goes in to one of the other bedrooms, to make part of the stairwell.
19. The Board found that Mr. Horne testified that the shipping container on the Property is temporary. He noted that he initially applied for a permit to convert the shipping container to a shed but has changed directions and is proceeding with the addition. The container will be removed after the garage construction is completed. He noted that the foundation and footer for the garage have been poured and that the framing for the garage will be done in two (2) weeks.
20. The Board found that Mr. Horne testified that, at one time, the yard sloped where the garage is but the ground has been leveled out.
21. The Board found that Mr. Horne testified that the retaining wall is located behind the house and that they are limited with placement of improvements because of the retaining wall. He noted that the Property slopes approximately 6 feet behind the retaining wall.
22. The Board found that Mr. Horne testified that the garage will be use to park his truck.
23. The Board found that Mr. Horne testified that he has a proposal to do new septic tanks and drainage field and that the septic will be moved to the right of the dwelling. He noted that this septic location leaves him with a 14 feet driveway to go around to the garage. He testified that they were told they could make the septic drain field larger if they wanted to but the addition has to stop at 20 feet because of the septic placement. He believes that the placement of the septic tanks is limiting their addition also. He noted that the Property uses a septic system and all approvals for the a new septic system have been received.
24. The Board found that Mr. Horne testified that this addition is the size needed to accommodate the needs of his family.

25. The Board found that no one appeared in support of or in opposition to the Application.
26. 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 its size, shape, and topography. The Property, though consisting of 3 lots, is wide but not deep. Furthermore, a significant portion of the rear yard is considered to be in the flood zone as is shown on the survey. The Applicant testified that the Property slopes significantly towards the rear yard. These unique characteristics of this Property limit the buildable area available to the Applicant and have created an exceptional practical difficulty and unnecessary hardship for the Applicant who seeks to construct an addition to the dwelling and to place a garage on the lot. The Property is also unique because the retaining wall which separates the high ground in the front from the low ground in the rear is not parallel with the road thereby limiting an already shallow building envelope. The Applicant did not construct the dwelling and is limited by the design of the dwelling and the placement of a septic system on where the garage and addition can reasonably be located.
 - 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 a unique size and the buildable area thereof is limited due to its size, shape, and physical conditions. The Applicant seeks to construct an addition to the dwelling and to place a garage 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 the Applicant to construct an addition to the dwelling and to place a garage on 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 also notes that the Applicant will be demolishing an existing guest house and removing a shipping container from the Property.
 - d. The unnecessary hardship and exceptional practical difficulty were not created by the Applicant. The Applicant did not create the unusual size, shape, and physical conditions of the Property. These conditions have resulted in a limited building envelope on the Property and the small building envelope has created the exceptional practical difficulty. The prior development of the lot by a prior owner has also limited the building envelope. Moreover, the Property has a front property line that is angled inversely to the existing retaining wall. The difficulty caused by the small size of the lot is exacerbated due to the fact that a portion of the rear yard is located in a flood zone. 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 Applicant but were created by the lot's unique characteristics and the development by a prior owner. The Board also notes that the retaining wall, which limits the location of the house, was located on the Property by a prior owner and appears to have been located on the Property for some time.
 - 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 proposed structures will have no effect on the character of the neighborhood. No substantial evidence was presented that convinced the Board the variances would somehow alter the essential character of the neighborhood. The neighbors presented concern about parking and the shipping container. The Applicant testified, however, that the shipping container will be removed and that the garage will be used for parking. Based on these representations, the Board finds that two of the major concerns presented by the opposition will be addressed. The Board also notes there is a gap between the edge of paving of the road and the front property line so the encroachments into the front yard setback are likely not as noticeable as it otherwise would be.

- 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 him to construct an addition to the dwelling and to place a garage on the Property. The structures cannot be moved closer to the rear due to the flood zone and the retaining wall as previously noted.
- 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. Travis Hastings, Mr. Jordan Warfel, and Mr. John Williamson. Mr. Jeffrey Chorman 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 February 6, 2023