

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: WILKINSON DEVELOPMENT, LLC

(Case No. 12417)

A hearing was held after due notice on February 17, 2020. The Board members present were: Dr. Kevin Carson, Mr. Jeff Chorman, Ms. Ellen Magee, Mr. John Williamson, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for a variance from the side yard setback requirement for a proposed dwelling.

Findings of Fact

The Board found that the Applicant is requesting a variance of 1.5 feet from the ten (10) feet side yard setback requirement on the south side for a proposed home. This application pertains to certain real property located on the east corner of Arbor Circle and Woodridge Drive within the Woodbridge subdivision (911 Address: 22144 Arbor Circle, Milton); said property being identified as Sussex County Tax Map Parcel Number 2-34-10.00-327.00. 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 survey of the Property dated January 8, 2020, and a portion of the tax map of the area.
2. The Board found that the Office of Planning & Zoning received no letters in support of and seven (7) letters in opposition to the Application.
3. The Board found that Bryan Elliott was sworn in to testify about the Application.
4. The Board found that Mr. Elliott testified that he represents Insight Homes who will be constructing the proposed home.
5. The Board found that Mr. Elliott testified that the lot is unique as it is small and narrow front to back and that the lot is one of the smallest lots in the neighborhood.
6. The Board found that Mr. Elliott testified that the variance is necessary to enable the reasonable use of the Property and the lot cannot otherwise be developed for a reasonable sized modern home without the variance.
7. The Board found that Mr. Elliott testified that the practical difficulty was not created by the Applicant but by the unique building envelope of the lot.
8. The Board found that Mr. Elliott testified that the proposed dwelling will enhance the neighborhood and will not alter the essential character of the neighborhood.
9. The Board found that Mr. Elliott testified that a smaller home would hurt the resale value of homes in the neighborhood.
10. The Board found that Mr. Elliott testified that the request is the minimum variance to afford relief.
11. The Board found that Mr. Elliott testified that the first floor of the house consists of 1,800 square foot with a porch.
12. The Board found that Mr. Elliott testified that there is common area to the rear yard and there is an easement between the properties.
13. The Board found that Mr. Elliott testified that the home designs have been approved by the developer and are similar to the existing homes.
14. The Board found that Laurie Chakin and Laurence Kamlot were sworn in to give testimony in opposition to the Application.
15. The Board found that Ms. Chakin testified that granting the variance for a model home could set a precedent and that would be detrimental to the look of the community. Ms. Chakin and Mr. Kamlot are concerned that approval of this variance would encourage others to also seek variances.

16. The Board found that Ms. Chakin testified that current residents chose different lots or smaller homes to comply with County setbacks.
17. The Board found that Ms. Chakin testified that 77 lots have been sold but not all have been developed at this time.
18. The Board found that Ms. Chakin testified that the builder should find another model which would meet setbacks.
19. The Board found that Mr. Kamlot testified that approximately 1/3 of the lots in the neighborhood have been built.
20. The Board found that Mr. Kamlot testified that Insight Homes built a home different from others in the neighborhood and those homes are larger than ones built by other builders.
21. The Board found that Mr. Kamlot testified that the Applicant should provide a strong argument why a smaller dwelling could not be placed on the lot and the fact that this is a small or simple variance request should not be the reason for granting the request.
22. The Board found that Mr. Elliott testified that the lot is different from the vast majority of lots in the neighborhood.
23. The Board found that Mr. Elliott testified that this will be the model home.
24. The Board found that Mr. Elliott testified that there is 0.25 feet on the opposite side of the house to allow a little leeway and, thus, the Applicant could use a variance of 1.3 feet instead of 1.5 feet.
25. The Board found that no one appeared in support of and three (3) parties appeared 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 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 prove that a reasonably sized dwelling could not be built in strict conformity with the Sussex County Zoning Code. The Applicant proposes to construct a new dwelling on this lot and the dwelling will encroach into the side yard setback area. The Applicant argued that the style of home requires this encroachment but the Applicant failed to demonstrate that there was no other way to reasonably develop the lot without a variance. In this case, the lot is essentially a blank slate upon which the Applicant may develop the lot in compliance with the Code. The Board was simply not convinced that the Applicant could not otherwise place a dwelling on the Property in compliance with the Code. Perhaps the dwelling would not be in the exact location where the Applicant wants it to be located but the Property appears to have a large enough building envelope for the Applicant to construct a reasonably sized dwelling in compliance with the Sussex County Zoning Code. The Board also notes that neighbors testified that there are smaller homes in the neighborhood. For these reasons, the Board finds that the Property could be developed in strict conformity with the Code and that the variance is not necessary to enable reasonable use of the Property.
 - b. The Board finds that the Applicant is creating its own exceptional practical difficulty by proposing to a construct a dwelling which does not fit within the building envelope. The Applicant's decision to construct this dwelling in this location is the reason for the need for a variance 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 building envelope appears to otherwise be able to fit a dwelling without the need for the variance. The Board was not convinced that the variance request was the

product of a *need*. Instead, the variance request appears to be the product of a *want* as the Applicant seeks to build the dwelling as proposed for purposes of convenience, profit, and / or caprice. Since the Applicant can build a dwelling that can comply the Sussex County Zoning Code, the need for the variance 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.

- c. Since the variance is not necessary to enable the reasonable use of the Property, the Board also finds that the variance requested is not the minimum variance necessary to afford relief. Furthermore, the Board finds that no variance is needed to afford relief since there is space to build a reasonably sized dwelling on the Property in compliance with the Sussex County Zoning Code.

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, Ms. Ellen Magee, and Mr. John Williamson. Dr. Kevin Carson and Mr. Brent Workman voted against the Motion to deny the variance application.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY



Ellen M. Magee
Chair

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

Date May 5, 2020