

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: PARKER ENT PSP, JOHN H. PARKER, SR., TRUSTEE (Case No. 11090)

A hearing was held after due notice on November 5, 2012. The Board members present were: Mr. Dale Callaway, Mr. Jeff Hudson, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for a variance from the minimum depth for a parcel requirement.

Findings of Fact

The Board found that the Applicant was seeking a variance of 1.84 feet from the 100 feet minimum depth for a parcel requirement. The Applicant has requested that the aforementioned requested variance be granted as it pertains to certain real property located north of Route 326A (State Street) approximately 1,500 feet east of Route 82 (Delaware Avenue); said property being identified as Sussex County Tax Map Parcel Number 1-33-17.09-6.00. After a hearing, the Board made the following findings of fact:

1. John Parker was sworn in and testified on behalf of the Application.
2. James Fuqua, Esquire, appeared and presented the Application on behalf of the Applicant.
3. The Board found that Mr. Fuqua stated that the depth of the lot is 531 feet and that the Property is 1.92 acres.
4. The Board found that Mr. Fuqua stated that the Applicant wants to create two (2) lots that will each be 0.9 acres in size.
5. The Board found that Mr. Fuqua stated that, in the proposed subdivision, one lot (Lot 1) will be adjacent to the road and the rear lot (Lot 2) will access the road through a driveway easement over Lot 1.
6. The Board found that Mr. Fuqua stated that the Property is zoned Agricultural Residential (AR-1) and is required to have a width of 100 feet.
7. The Board found that Mr. Fuqua stated that the proposed easement will measure 50 feet in width thereby leaving Lot 1 with a width of 98.16 feet.
8. The Board found that Mr. Fuqua stated that the actual driveway will likely be only twenty feet wide.
9. The Board found that Mr. Fuqua stated that the situation is unique.
10. The Board found that Mr. Fuqua stated that the rear of the Property is adjacent to the Millsboro Pond.
11. The Board found that Mr. Fuqua stated that the variance is necessary to enable reasonable use of the Property because the property cannot be subdivided without the variance.
12. The Board found that Mr. Fuqua stated that the difficulty was not created by the Applicant as the Applicant did not create the width of the lot.
13. The Board found that Mr. Fuqua stated that the variance will not alter the essential character of the neighborhood.
14. The Board found that Mr. Fuqua stated that the variance sought is the minimum variance necessary to afford relief.
15. The Board found that Mr. Parker, under oath, confirmed the statements made by Mr. Fuqua.
16. The Board found that Elva Allen and Mabel Conaway were sworn in and testified in opposition to the Application and submitted a packet of exhibits to the Board.
17. The Board found that Ms. Allen testified that she is acting on behalf of the Conaway siblings.

18. The Board found that Ms. Allen testified that the Conaway family disputes the ownership of the Property and that she believes that the Applicant has attempted to steal the Property from the Conaway siblings.
19. The Board found that Mr. Fuqua objected to the testimony in reference to the ownership since has previously been litigated.
20. The Board found that Ms. Allen testified that she believes the variance should be denied and is not litigating the ownership.
21. The Board found that Ms. Allen testified that she is still fighting the ownership of the Property and that she has contacted local politicians, newspapers, and attorney generals about the ownership of the Property.
22. The Board found that Ms. Allen testified that she does not think the variance is necessary and that the variance would alter the essential character of the neighborhood.
23. The Board found that Ms. Conaway testified that she also feels the variance will alter the essential character of the neighborhood.
24. The Board found that Ms. Conaway testified that she lives on the adjacent property.
25. The Board found that Ms. Conaway testified that she is concerned the Applicant will construct a road to the existing pond.
26. The Board found that Ms. Conaway testified that the marsh extends 20 feet into the rear yard of the Property.
27. The Board found that Ms. Conaway testified that the area is a residential area.
28. The Board found that Ms. Conaway testified that she does not want to see the Property subdivided.
29. The Board found that Ms. Conaway testified that she does not want to see a boat ramp on the Property.
30. The Board found that Ms. Conaway testified that she does not believe the Applicant is the rightful owner of the Property.
31. The Board found that no parties appeared in support of the Application.
32. The Board found that two (2) parties appeared in opposition to the Application.
33. The Board found that it was not the proper forum to litigate the ownership of the Property and that its only determination was as to whether the Applicant met the standards for granting a variance.
34. The Board tabled the Application until its next meeting scheduled on November 19, 2012.
35. At its meeting on November 19, 2012, the Board discussed the Application.
36. Based on the findings above and the testimony presented at the public hearing and the public record, the Board determined that the Application met the standards for granting a variance. The Property is narrow making it unique in size. The variance will enable reasonable use of the Property. The variance will not alter the essential character of the neighborhood. The variance sought is the minimum variance necessary to afford relief.

The Board approved the variance application finding that it met the standards for granting a variance.

Decision of the Board

Upon motion duly made and seconded, the Application was approved. The Board Members voting to approve the Application were Mr. Jeff Hudson, Mr. Norman Rickard and Mr. Brent Workman. Mr. Dale Callaway and Mr. John Mills voted against the Motion to Approve the Application.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY


Dale Callaway
Chairman

If the use is not established within one (1)
year from the date below the application
becomes void.

Date December 11, 2012.