

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: ROBERT O. THOMPSON & CHRISTINA M. THOMPSON

(Case No. 11583)

A hearing was held after due notice on June 8, 2015. The Board members present were: Mr. Dale Callaway, Mr. Jeff Hudson, Mr. John Mills, and Mr. Brent Workman.

Nature of the Proceedings

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

Findings of Fact

The Board found that the Applicants were requesting a variance of 99.05 feet from the 150 feet minimum lot width requirement for a parcel. This application pertains to certain real property located on the west side of Bi-State Boulevard approximately 81 feet north of W. Snake Rd. (911 Address: 36192 Bi-State Boulevard, Delmar); said property being identified as Sussex County Tax Map Parcel Number 5-32-13.00-32.00.

1. The Board was given copies of the Application, a portion of the tax map of the area, a survey of the Property dated February 15, 2015, a letter from Douglas Williams, and a letter from the Delaware Department of Transportation ("DelDOT").
2. The Board found that the Office of Planning & Zoning had not received any correspondence in support of or in opposition to the Application.
3. Robert Thompson, Christina Thompson, and Doug Williams were sworn in to testify about the Application.
4. The Board found that Mr. Williams testified that he is a licensed land surveyor.
5. The Board found that Mr. Williams testified that the Applicants purchased the Property in 2014.
6. The Board found that Mr. Williams testified that the Applicants plan to subdivide the Property into two lots to give a lot to their son.
7. The Board found that Mr. Williams testified that there is an existing dwelling, shed and garage on the north side of the Property.
8. The Board found that Mr. Williams testified that there is a line of cedar trees which separates the portion of the property where the dwelling is located from the proposed subdivided lot. The existing landscaping and hedgerow give the Property the appearance of two (2) lots.
9. The Board found that Mr. Williams testified that the Property is located along Bi-State Boulevard near Delmar and there are numerous residential buildings in the area.
10. The Board found that Mr. Thompson testified that the Property is large enough to accommodate another dwelling and that this subdivision would allow his son to build a house nearby without having to use farmland.
11. The Board found that Mr. Thompson testified that they have approached neighbors and they do not object to the proposal.
12. The Board found that Mr. Thompson testified that, if the new lot was 150 feet wide, it would cut off the driveway to the existing dwelling.
13. The Board found that Mr. Williams testified that the Applicants have obtained a letter of no objection from the Delaware Department of Transportation ("DelDOT") for the entrance to the proposed lot (Lot 1). The proposed lot (Lot 1) will have a separate driveway.

14. The Board found that Mr. Williams testified that the existing dwelling has an access from an existing horseshoe style driveway. There is a private roadway to the north of the Property which has no public access and the Applicants do not have rights to access that road. The Applicants have explored obtaining access to the private roadway.
15. The Board found that Mr. Thompson testified that the two lots will not share a driveway. Mr. Williams testified that the Applicants explored a shared driveway but were concerned about the long-term impact of such an access.
16. The Board found that Mr. Thompson testified that the metal shed on the proposed lot (Lot 1) was in its current location when they purchased the Property.
17. The Board found that Mrs. Thompson testified that the Property consists of 6 acres.
18. The Board found that Mr. Williams testified that the variance will not alter the essential character of the neighborhood as there are numerous residential properties nearby and the neighboring property to the south is less than 150 feet wide.
19. The Board found that Mr. Thompson testified that the proposed dwelling on Lot 1 will be similar to the home on their lot and that they will plant Leland Cypress trees between the new driveway and the neighboring lot to the south.
20. The Board found that Mr. Williams testified that the variance requested is the minimal variance to afford relief.
21. The Board found that Mr. Williams testified that the line subdividing the two proposed lots was placed in its location due to the location of the line of cedar trees and the sheds.
22. The Board found that Mr. Williams testified that, if they had subdivided the Property at the south side of the U-shaped driveway, two unusually shaped lots would have been created. There was nowhere else to place the driveway.
23. The Board found that Mr. Williams testified that the proposed lot will be close to 200 feet wide where the dwelling will be placed.
24. The Board found that three (3) parties appeared in support of the Application.
25. The Board found that no 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 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 as it is approximately 6 acres, which is a large parcel but has been oddly developed. The Property currently consists of a dwelling, pool, deck, garage and multiple sheds but a large portion of the Property is separated from the dwelling and structures by a line of cedar trees and other plantings. As a result, a large portion of the Property consisting of nearly 2 acres is usable for a residential dwelling but is not wide enough at Bi-State Boulevard to be subdivided without a variance. The large size of the Property and its unique development has created an exceptional practical difficulty for the Applicants, which is apparent when reviewing the survey attached the Application.
 - b. Due to the uniqueness of the Property, the Property cannot be subdivided in strict conformity with the Sussex County Zoning Code. The Applicants seek the requested variance in order to create a lot for their son to build a house. The existing development of the Property and the location of cedar trees and shrubbery make it impossible to subdivide the Property into two lots without creating two oddly shaped lots. The proposed subdivision will enable the Applicants to create a usable building lot adjacent to their home. The new lot will consist of nearly 2 acres and will

be large enough to place a reasonably sized dwelling. Though the lot will only be 50.95 feet at the front property line, the new lot will actually be nearly 200 feet in the area where the dwelling will be placed. The Board is convinced that the variance is necessary to enable the reasonable use of the Property as the variance will allow the Applicants to subdivide the Property into 2 reasonably sized lots. The Board is convinced that the size, shape and location of the two lots are reasonable; which is confirmed when reviewing the survey.

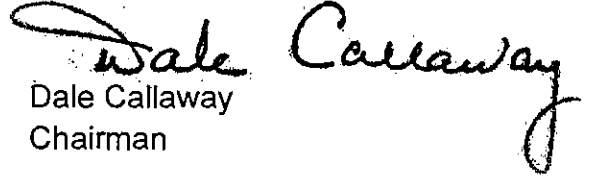
- c. The exceptional practical difficulty was not created by the Applicants. The Property is quite large but cannot be subdivided into 2 lots without a variance. The difficulty was created by the original development of the Property. The Applicants did not originally place the dwelling, pool, garage, sheds, trees, or shrubbery on the Property. The previous development of the Property has caused the Property to appear to be subdivided even though it is not actually subdivided. The Applicants seek to subdivide the Property into 2 reasonably sized lots but cannot do so without a variance due to the unique development of the Property. It is clear to the Board that the exceptional practical difficulty was not created by the Applicants.
- d. The variance 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 subdivision will not have a negative impact on the neighborhood. The Property is located along Bi-State Boulevard where there are other similar residential properties. The neighboring property to the south is also less than 150 feet wide. The Applicants have spoken with neighbors and no objection has been raised to the development. The Applicants intend to plant Leland Cypress trees along the driveway to the newly created lot in order to minimize the impact of the driveway on neighbors. The Applicants also obtained a letter of no objection from DeIDOT as to the development. No evidence was presented which would indicate that the variance would somehow alter the essential character of the neighborhood or be detrimental to the public welfare.
- e. The variance sought is the minimum variance necessary to afford relief and the variance requested represents the least modification possible of the regulation at issue. The Applicants have demonstrated that the variance sought will allow the Property to be subdivided as shown on the survey and that no additional variances are being requested. The Applicants have explored other options to minimize the need for the variance as well.

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. Dale Callaway, Mr. Jeff Hudson, Mr. John Mills, and Mr. Brent Workman. No Board Members voted against the Motion to approve the variance 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 July 21, 2015