

**BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY**

**IN RE: GERALD RICHARDSON**

**(Case No. 11804)**

A hearing was held after due notice on July 18, 2016. The Board members present were: Mr. Dale Callaway, Mr. John Mills, Mr. Jeff Hudson, Mr. Norman Rickard, and Mr. Brent Workman.

Nature of the Proceedings

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

Findings of Fact

The Board found that the Applicant was seeking a variance of 26.64 feet from the 150 feet lot-width requirement for a parcel. This application pertains to certain real property located on the south side of Omar Road approximately 0.3 miles west of Powell Farm Road (911 Address: 34152 Omar Road, Frankford); said property being identified as Sussex County Tax Map Parcel Number 1-34-11.00-89.00.

1. The Board was given copies of the Application, a portion of the tax map of the area, a letter of no objection from the Delaware Department of Transportation ("DelDOT"), an aerial photograph of the Property, and a survey of the Property dated November 30, 2015.
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 Gerald Richardson was sworn in to testify about the Application.
4. The Board found that Mr. Richardson testified that he would like to subdivide the 2.89 acre parcel into 2 lots but the existing road frontage of the Property will not allow him to meet the 150 feet lot width requirement for a parcel. The Property has 273 feet of road frontage.
5. The Board found that Mr. Richardson testified that the narrowness of the lot makes the Property unique.
6. The Board found that Mr. Richardson testified that the Property is a large lot for one dwelling and cannot be subdivided without a variance.
7. The Board found that Mr. Richardson testified that the Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code.
8. The Board found that Mr. Richardson testified that he did not create the exceptional practical difficulty.
9. The Board found that Mr. Richardson testified that the existing dwelling was built in 1932. He did not create the original lot and he did not create the lot width requirement.
10. The Board found that Mr. Richardson testified that the proposed lot will not alter the essential character of the neighborhood and the use will not impair the uses of the neighboring and adjacent properties. There are numerous properties nearby which have road frontage of less than 150 feet.
11. The Board found that Mr. Richardson testified that the variance requested is the minimum variance to afford relief as the variance requested is all that is necessary to subdivide the lot.
12. The Board found that Mr. Richardson testified that the proposed lot will likely be for a family member.

13. The Board found that Mr. Richardson testified that the shed in the rear of the Property is not in compliance with the Sussex County Zoning Code and will be removed.
14. The Board found that Mr. Richardson testified that he has a letter of no objection from DelDOT for the entrance to the new lot.
15. The Board found that Mr. Richardson testified that no variances will be needed to improve Parcel A if approved.
16. The Board found that no parties appeared in support of or in opposition to the Application.
17. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, which the Board finds credible, persuasive, and un rebutted, 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, which consists of 2.89 acres as shown on the survey, is unique as it a large but narrow lot. The Property only has road frontage of 273.36 feet rather than the minimum 300 feet needed to subdivide the lot into two parcels. These unique characteristics of the Property have created an exceptional practical difficulty for the Applicant who seeks to subdivide the lot.
  - b. Due to the Property's unique conditions, the Property cannot be subdivided in strict conformity with the Sussex County Zoning Code. The Applicant seeks to subdivide the Property into two lots but is unable to do so without violating the Sussex County Zoning Code due to the narrowness of the lot. The Board is convinced that the proposed subdivision of the Property is reasonable and that the variance requested is necessary to enable the reasonable use of the Property as the variance will allow the Applicant to reasonably subdivide the Property. The survey attached to the Application confirms that the subdivision is reasonable.
  - c. The exceptional practical difficulty was not created by the Applicant. The Applicant did not create the unique size and shape of the Property. The un rebutted evidence confirms that the Property was developed with a house in 1932 and has existed in its current form for many years. No evidence was presented that the lot's size and shape has changed since the implementation of the lot width requirement in the Sussex County Zoning Code. Notably, the Property is quite large and could easily service two dwellings on separate lots but the Property is too narrow to meet the lot width requirement. The unique characteristics of the Property are clear when reviewing the survey. The Board is convinced that these unique conditions have created an exceptional practical difficulty for the Applicant.
  - 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 Property will be subdivided into two lots – one of which will meet the necessary lot width requirement and one of which will be slightly smaller than the lot width requirement. The un rebutted evidence confirms that there are other lots in the neighborhood which are less than 150 feet wide and no evidence was presented that the proposed subdivision of the Property would somehow alter the essential character of the neighborhood or be detrimental to the public welfare. The Board also notes that DelDOT does not object to the proposed subdivision.
  - 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 Applicant has demonstrated the variance will allow

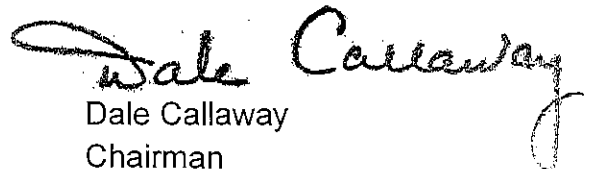
the Property to be subdivided into two lots. The proposed subdivision will include one lot which will meet the lot width requirement but not be wider than the minimum requirement. By limiting the size of the lot which will comply with the lot width requirement, the Applicant is minimizing the need for the variance for the other, narrower lot (Parcel A as shown on the survey).

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, Mr. Norman Rickard, 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 September 20, 2016.