

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

**IN RE: MICHAEL CHANOUX & MARGARET K. CHANOUX**

**(Case No. 11820)**

A hearing was held after due notice on August 15, 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 and the minimum lot size requirement for a parcel.

Findings of Fact

The Board found that the Applicants are seeking a variance of 60.52 feet from the 150 feet lot-width requirement for a parcel, a variance of 20.67 feet from the 150 feet lot-width requirement for a parcel, a variance of 31.19 feet from the 150 feet lot-width requirement for a parcel, a variance of 0.25 acre from the minimum 43,560 square feet lot size requirement for a parcel, and a variance of 0.246 acre from the minimum 43,560 square feet lot size requirement for a parcel. This application pertains to certain real property located on the west side of Lockerman Road, east side of Coastal Highway approximately 0.57 miles north of Steamboat Landing Road (911 Address: 28708 Lockerman Road, Milton); said property being identified as Sussex County Tax Map Parcel Number 2-35-16.00-8.00.

1. The Board was given copies of the Application, a portion of the tax map of the area, an aerial photograph of the Property, and a survey of the Property dated February 9, 2016.
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 Michael Chanoux, Margaret Chanoux, Leif Erickson, and Ken Christenbury were sworn in to testify about the Application. John Sergovic, Esquire, presented the case to the Board. Mr. Sergovic submitted exhibits to the Board including a portion of the Sussex County Zoning Code, aerial overlays of the Property, Sussex Conservation District Standard Plan Requirements, and Atlantic Source Management Soil Site Evaluation dated December 11, 2015.
4. The Board found that Mr. Sergovic stated that this Property is within the Conservation Zone portion of the Sussex County Zoning Code and that the subdivision of lots must meet different criteria due to the Conservation Zone requirements.
5. The Board found that Mr. Sergovic stated that Mr. Chanoux inherited the Property from his grandparents.
6. The Board found that Mr. Sergovic stated that the Property is located off of the northbound lane for Route 1 along the Broadkill River.
7. The Board found that Mr. Sergovic stated that, in 1966, the Delaware Department of Transportation ("DelDOT") built Route One and abandoned Old Route 14. The new highway ran through the middle of the Applicants' property leaving an odd shaped parcel on the east side of Route One.
8. The Board found that Mr. Sergovic stated that the configuration of the lands was caused by DelDOT's taking.
9. The Board found that Mr. Sergovic stated that the Applicants seek to subdivide the Property into three (3) lots.
10. The Board found that Mr. Sergovic stated that Lot 1 will be slightly more than one (1) acre. Lot 1 previously had a manufactured home for a medical hardship but

the home has since been removed. Lot 2 is where the original farmhouse is located.

11. The Board found that Mr. Chanoux, under oath, affirmed the statements made by Mr. Sergovic.
12. The Board found that Mr. Christenbury testified that Lot 1 would be the only lot that must meet the new impervious cover requirement through the Delaware Department of Natural Resources and Environmental Control ("DNREC"). The Property will meet the new stormwater management requirements.
13. The Board found that Mr. Christenbury testified that the variances are necessary to enable reasonable use of the properties.
14. The Board found that Mr. Christenbury testified that the adjacent property is owned by the State and cannot be otherwise developed.
15. The Board found that Mr. Christenbury testified that there is farmland and a cemetery in the area and the use will not substantially adversely affect the uses of the neighboring and adjacent properties.
16. The Board found that Mr. Christenbury testified that DeIDOT took a portion of the Property to create Route One and the Sussex County Zoning Code did not exist at the time the highway was constructed.
17. The Board found that Mr. Erickson testified that he is licensed by DNREC as a site evaluator and the proposed lots will meet all DNREC regulations.
18. The Board found that Mr. Erickson testified that the two existing residences are on conforming septic systems.
19. The Board found that Mr. Erickson testified that the deep groundwater will not be affected and the proposed subdivision will not lead to degradation of the surface or ground water.
20. The Board found that Mr. Erickson testified that the proposed lots will not adversely affect the Broadkill River.
21. The Board found that Mr. Chanoux testified that the original homestead is located on the proposed Lot 2. A shed and pump house are located on the Proposed Lot 3.
22. The Board found that Mr. Chanoux testified that the original farm was approximately thirty (30) acres.
23. The Board found that Mr. Sergovic stated that the State left the Applicants with only three (3) acres and the Applicants did not create the difficulty.
24. The Board found that Mr. Sergovic stated that that the difficulty was created by DeIDOT.
25. The Board found that Mr. Sergovic stated that the State has taken additional lands which cannot be used for residential use in the area.
26. The Board found that Mr. Sergovic stated that the Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code.
27. The Board found that no parties appeared in support of or in opposition to the Application.
28. 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 2.567 acres as shown on the survey, is unique as it a large but oddly shaped lot. The Property is not wide enough to subdivide the parcels into three lots. More importantly, however, the Property was created by the taking of DeIDOT in the 1960s to create Route 1. This taking left a very unusually shaped lot. These unique characteristics of the Property have created an exceptional practical difficulty for the Applicants who seek to subdivide the lot.

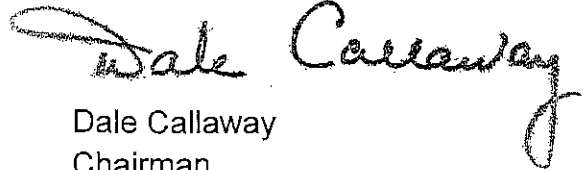
- b. Due to the Property's unique conditions, the Property cannot be subdivided in strict conformity with the Sussex County Zoning Code. The Applicants seeks to subdivide the Property into three lots but are unable to do so without violating the Sussex County Zoning Code due to the odd shape of the lot. The Board is convinced that the proposed subdivision of the Property is reasonable and that the variances requested are necessary to enable the reasonable use of the Property as the variances will allow the Applicants 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 Applicants. The Applicants did not create the unique size and shape of the Property. The unrebutted evidence confirms that the Property originally consisted of approximately thirty (30) acres but was split when DelDOT took a significant part of the Property to create Route 1. The resulting taking left an oddly shaped lot adjacent to unused state-owned lands. This taking took place prior to the enactment of the Sussex County Zoning Code. 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 three 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 Applicants.
- d. 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 Property will be subdivided into three lots. The unrebutted evidence confirms that the neighboring properties are either state lands, farmland, or a cemetery. 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.
- e. The variances sought is the minimum variances necessary to afford relief and the variances requested represent the least modifications possible of the regulations at issue. The Applicants have demonstrated the variances will allow the Property to be subdivided into three lots.
- f. For the reasons already stated herein, the Board finds that the Applicants have demonstrated that special conditions or circumstances exist that are peculiar to the land within the County and that a literal enforcement of provisions within the conservation zone would result in unwarranted hardship.
- g. The Board finds that the variance requests are not based upon conditions or circumstances which are a result of actions by the Applicants, nor do the request arise from any condition relating to the land use, either permitted or nonconforming, on any neighboring property.
- h. The Board found that the granting of variances will not adversely affect water quality or adversely impact the tidal water bodies adjacent to the conservation zone. The proposed variances will be in harmony with the general spirit and intent of the section and any subsequent regulations. The testimony from Mr. Christenbury and Mr. Ericson was particularly persuasive to the Board. Notably, there was no evidence to the contrary presented to the Board.

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 October 18, 2016