

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: JAMES WHARTON

(Case No. 11854)

A hearing was held after due notice on November 7, 2016. The Board members present were: Mr. Dale Callaway, Mr. John Mills, Mr. Jeff Hudson, and Mr. Brent Workman.

Nature of the Proceedings

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

Findings of Fact

The Board found that the Applicant is seeking a variance of 98.3 feet from the 150 feet lot-width requirement for a parcel. This application pertains to certain real property located on the south side of Kings Crossing Road and northeast side of Little Hill Road approximately 365 feet from the southeast corner of said roads (911 Address: None Available); said property being identified as Sussex County Tax Map Parcel Number 3-33-10.00-37.00.

1. The Board was given copies of the Application, a portion of the tax map of the area, an aerial photograph of the Property, a survey of the Property dated July 19, 2016, a site evaluation of the Property, a letter of no objection from Myron Baker, a letter from the Delaware Department of Natural Resources and Environmental Control ("DNREC"), and a subdivision plan dated August 23, 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 James Wharton was sworn in to testify about the Application.
4. The Board found that Mr. Wharton testified that the Property is unique because the soil test performed on the site shows that the best location for a septic system is near the Little Hill Road access.
5. The Board found that Mr. Wharton testified that access from Kings Crossing Road would involve crossing a large drainage ditch and would impact a large farming operation.
6. The Board found that Mr. Wharton testified that any other lot configuration would adversely affect the existing farming activity as well as impacting a large drainage ditch.
7. The Board found that Mr. Wharton testified that the desired lot location is in the rear of the Property as the soils in the rear of the Property are the most suitable for a septic system per the most recent soil evaluation.
8. The Board found that Mr. Wharton testified that a large portion of the Property on the Kings Crossing side of the Property is not suitable for septic per the soil evaluation.
9. The Board found that Mr. Wharton testified that the best use of the land would be allow an entrance at the Little Hill Road access point.
10. The Board found that Mr. Wharton testified that there is an existing culvert at the desired access indicating past access to the Property at the Little Hill Road access point. The access on Little Hill Road has been in place for many years.
11. The Board found that Mr. Wharton testified that there are several entrances in the area similar to the one described for the Property.
12. The Board found that Mr. Wharton testified that the required road frontage for a standard lot in an AR-1 zoning district is 150 feet and the frontage along Little Hill Road is 51.70 feet.

13. The Board found that Mr. Wharton testified that the variance requested in the minimum variance to afford relief.
14. The Board found that Mr. Wharton testified that an existing ditch on the Property also creates a difficulty to access the Property from Kings Crossing Road. The drainage ditch bisects the Property.
15. The Board found that Mr. Wharton testified that he plans to give the lot to his son.
16. The Board found that Mr. Wharton testified that he spoke with his neighbor about the Application and the neighbor is in support of the Application.
17. The Board found that Mr. Wharton testified that he obtained the Property from his parents in 2010 and that he has not previously subdivided the Property.
18. The Board found that one (1) party appeared in support of the Application.
19. The Board found that no parties appeared in opposition to the Application.
20. 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 approximately 10 acres as shown on the survey, is unique as it a large lot which fronts on two roads and has poor drainage soils on the west side of the Property. The Property is quite large and has significant frontage on Kings Crossing Road but the soils along that portion of the Property are not suitable for a septic system. The Applicant seeks to subdivide a portion of the Property so that his son can build a home and the home will need suitable soils for the septic system. The west side of the Property has such suitable soils and a large parcel consisting of 3.154 acres can be subdivided from the Property for that lot. The new lot ("Parcel D") can be accessed from Little Hill Road. While Parcel D is a large lot which significant width and depth in the rear of the Property, Parcel D is narrow at its access point for Little Hill Road. Even though this access point already exists and there is no change to the width of the access, the Applicant is unable to subdivide the Property as proposed without a variance. The Board finds that the unique conditions of the Property which were inherent at the time the Applicant acquired it (e.g. the narrow width along Little Hill Road and the soil conditions) have created an exceptional practical difficulty for the Applicant in his attempt to reasonably subdivide the Property.
 - 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 along Little Hill Road. 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 into two large lots. The survey attached to the Application confirms that the subdivision is reasonable. The Board notes that, due to the pre-existing width of the Property along Little Hill Road, the Applicant would not otherwise be able to subdivide the Property without a variance even though it is a large parcel.
 - 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 Applicant acquired the Property in 2010 and has made no changes to the Property since that time. Likewise, the Property is serviced by a drainage ditch that bisects the Property and limits a significant portion of the Property from being used for a septic

system. Notably, the Property is quite large and could easily service two separate lots but the Property is too narrow to meet the lot width requirement along Little Hill Road. 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 smaller than the lot width requirement. The un rebutted evidence confirms that the width of the Property along Little Hill Road will not change by virtue of this subdivision. Rather, the Applicant will simply use an existing culvert to access Parcel D from Little Hill Road. 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 a neighbor 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. The other parcel – Parcel D – will not meet the lot width requirement but the width of that lot will be no different than the width of the existing property along Little Hill Road.

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. Mr. Norman Rickard did not participate in the discussion or vote of this 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 January 10, 2017