

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: VANCE PHILLIPS

(Case No. 11870)

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 42.29 feet from the 150 feet lot-width requirement for a parcel of land. This application pertains to certain real property located on the east side of Old Hickory Road approximately 0.70 miles north of Airport Road (911 Address: 31891 Old Hickory Road, Laurel); said property being identified as Sussex County Tax Map Parcel Number 4-32-7.00-26.01.

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 September 20, 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 Steve Adkins was sworn in to testify about the Application.
4. The Board found that Mr. Adkins testified that the Applicant is selling a portion of his property. The buyer is a young farmer who owns farmland in the area and is purchasing land located across the street.
5. The Board found that Mr. Adkins testified that the portion of the Property being sold contains an existing packing shed. The packing shed was used by the Phillips family for their farming business.
6. The Board found that Mr. Adkins testified that a farmhouse is located nearby as well. There is a fence between the packing shed and the house.
7. The Board found that Mr. Adkins testified that the Applicant is only interested in selling the packing shed to the buyer and the Applicant seeks to retain the rest of the farm, including the farmhouse.
8. The Board found that Mr. Adkins testified that the proximity of the existing dwelling and packing shed make it impossible to subdivide the Property so that the new parcel will comply with the lot-width requirement.
9. The Board found that Mr. Adkins testified that the Property cannot otherwise be developed due to the location of the house and a nearby ditch.
10. The Board found that Mr. Adkins testified that the buildings will meet all setback requirements.
11. The Board found that Mr. Adkins testified that the difficulty is not being created by the Applicant.
12. The Board found that Mr. Adkins testified that the variance will not alter the essential character of the neighborhood. The packing shed was built in the 1980s and the area is a farming area and will remain a farming area.
13. The Board found that Mr. Adkins testified that the variance is the minimum variance necessary to afford relief.
14. The Board found that Mr. Adkins testified that the lot cannot be realigned to meet the lot-width requirement due to the location of the house.

15. The Board found that Mr. Adkins testified that the buyer will continue to use the packing shed and does not propose to place a dwelling on the lot.
16. The Board found that one (1) party appeared in support of the Application.
17. The Board found that no parties appeared in opposition to the Application.
18. 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 is a large farm and the Applicant seeks permission to subdivide a portion thereof consisting of 0.752 acres in order to sell to a farmer who is purchasing farmland across the street. The portion of the Property ("Parcel A") currently houses a packing shed, office, and loading dock as is shown on the survey presented by the Applicant. These structures have been on the Property since the 1980s and were part of the Applicant's farming operation. The Applicant intends to sell Parcel A but retain other portions of the Property, including a farmhouse located nearby. Due to the location of the farmhouse and a ditch, Parcel A cannot be subdivided while still meeting the lot-width requirements. The Board finds that the Property's development is unique and the situation is also unique. These unique conditions 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 as shown on the survey but is unable to do so without violating the Sussex County Zoning Code due to the location of the farmhouse and a ditch. 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. Notably, the purchaser of Parcel A intends to continue using Parcel A as it has been used for approximately thirty (30) years. No additional development of Parcel A is being proposed.
 - c. The exceptional practical difficulty was not created by the Applicant. The Applicant did not create the unique conditions of the Property. The un rebutted evidence confirms that the Property was originally used as part of a family farming operation and a farmhouse was located near a packing shed, loading dock, and farm office. The Applicant intends to sell the packing shed, loading dock, and farm office but, in order to sell those structures, he must subdivide the underlying land from the rest of the farm. The structures, however, are located too close to the farmhouse for Parcel A to be subdivided while still meeting the lot-width requirements. Notably, Parcel A will meet all acreage requirements and the structures located thereon will meet the setback requirements. 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 with Parcel A needing the variance. The un rebutted evidence confirms that Parcel A houses a packing shed, loading dock, and farm office used for farming operations nearby. The purchaser of Parcel A owns nearby farmland and intends to use the packing shed,

loading dock, and farm office on Parcel A for his business. No additional development to Parcel A is proposed and the use of Parcel A will not change at all from its previous use. The Board also notes that a fence currently separates Parcel A from the farmhouse located nearby so Parcel A has traditionally been separated from other portions of the Property. The neighboring properties are also used for agricultural purposes and Parcel A will fit with the character of the neighborhood. 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 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 he has tried to minimize the size of the variance by making Parcel A as wide as possible while still complying with setback and acreage requirements. Notably, there are no variances needed from any of those requirements.

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.