

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: EUGENE D. SMITH

(Case No. 11974)

A hearing was held after due notice on June 19, 2017. The Board members present were Mr. Dale Callaway, Ms. Ellen Magee, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman.

Nature of the Proceedings

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

Findings of Fact

The Board found that the Applicant was seeking a variance of 97.87 feet from the 150 feet lot width requirement for proposed Parcel A and a variance of 5.39 feet from the 150 feet lot width requirement for the proposed Residual Parcel. This application pertains to certain real property located on the west side of Sapp Road (Route 208) approximately 308 feet southeast of Cedar Beach Road (Route 36) (911 Address: 20474 Sapp Road, Milford); said property being identified as Sussex County Tax Map Parcel Number 3-30-7.00-55.00.

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 March 20, 2017.
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 Robert Nash was sworn in to testify about the Application.
4. The Board found that Mr. Nash testified that the proposed subdivision is to create a lot for the Applicant's son. The Applicant's other son owns the adjacent property. The Applicant lives nearby.
5. The Board found that Mr. Nash testified that there is no available road frontage to subdivide the Property and a 50 feet easement with 100 feet road frontage is the only option of subdividing the parcel. The Delaware Department of Transportation ("DelDOT") has approved the entrance.
6. The Board found that Mr. Nash testified that the parcel is large enough to subdivide but cannot be subdivided without a variance.
7. The Board found that Mr. Nash testified that the exceptional practical difficulty has not been created by the Applicant.
8. The Board found that Mr. Nash testified that the variances will not alter the essential character of the neighborhood.
9. The Board found that Mr. Nash testified that the area is agricultural and residential with large lots.
10. The Board found that Mr. Nash testified that the variances represent the least modification possible of the regulations at issue.
11. The Board found that two (2) parties appeared in support of the Application.
12. The Board found that no parties appeared in opposition to the Application.
13. 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 unrebutted, 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 5.265 acres as shown on the survey, is unique as it a large but narrow lot. The Property only has road frontage of 196.74 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.

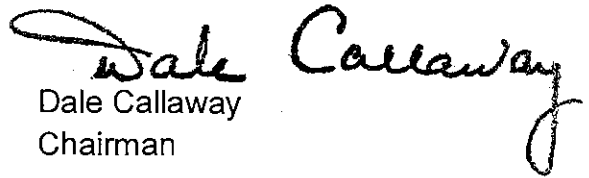
- b. Due to the Property's unique conditions, the Property cannot be subdivided in strict conformity with the Sussex County Zoning Code. The Applicant seeks to subdivide the Property into two lots but is unable to do so without violating the Sussex County Zoning Code due to the narrowness of the lot. 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 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 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 two lots – one of which will be slightly smaller than the lot width requirement. 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 DeIDOT does not object to the proposed subdivision.
- e. The variances sought are the minimum variances necessary to afford relief and the variances requested represent the least modifications possible of the regulations at issue. The Applicant has demonstrated the variances will allow the Property to be subdivided into two lots. The proposed subdivision will include one lot which will nearly meet the lot width requirement. By limiting the size of the lot which will nearly 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, Ms. Ellen Magee, 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 August 22, 2017.