

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

**IN RE: BRUCE J. ESHAM**

**(Case No. 12029)**

A hearing was held after due notice on October 2, 2017. The Board members present were: Mr. Dale Callaway, Mr. Bruce Mears, Mr. John Mills, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for variances from the front yard and side yard setback requirements.

Findings of Fact

The Board found that the Applicant is seeking a variance of 5.57 feet from the thirty (30) feet front yard setback requirement for an existing barn located near New Lot 1 and a variance of 4.62 feet from the fifteen (15) feet side yard setback requirement on the west side for an existing barn located near New Lot 1. This application pertains to certain real property is located east side of Westwood Road (Road 426), approximately 780 feet south of Pear Tree Road (Road 424) (911 Address: 21906 Esham Lane, Millsboro); said property being identified as Sussex County Tax Map Parcel Number 3-33-7.00-2.07

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 January 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. For purposes of clarification, the residential portion of the Property is classified on the survey as New Lot 1 and the agricultural portion of the Property is classified on the survey as the Remaining Parcel. The variances being sought are related to the barn located on the Remaining Parcel closest to New Lot 1. The front property line of the Remaining Parcel shall consist of those portions of the Remaining Parcel which border Esham Lane and are identified as L1 and L2 on the survey. The lines identified as L3, L4, and L5 on the survey shall be considered the side property lines of the Remaining Parcel.
4. The Board found that Bruce Esham was sworn in to testify about the Application and Tom Carney, Esquire, presented the case on behalf of the Applicant.
5. The Board found that Mr. Carney stated that the Applicant is subdividing the Property and needs variances related to the subdivision. The Applicant is separating the residential portion of the Property from the agricultural portion of the Property.
6. The Board found that Mr. Carney stated that the need for the variances is caused by the uniqueness of the Property.
7. The Board found that Mr. Carney stated that the variances will not alter the character of the neighborhood.
8. The Board found that Mr. Carney stated that there is no development being proposed.
9. The Board found that Mr. Carney stated that the need for the variance was not created by the Applicant.
10. The Board found that Mr. Carney stated that the variances requested are the minimum variances necessary to afford relief.
11. The Board found that Mr. Esham affirmed the statements made by Mr. Carney as true and correct.

12. The Board found that Mr. Esham testified that the residual parcel will remain farmland.
13. The Board found that Mr. Esham testified that the barn behind the existing house was placed on the Property in 1969.
14. The Board found that Mr. Esham testified that the barn to the rear of the Property was erected approximately 25 years ago.
15. The Board found that Mr. Esham testified that he and his family own the surrounding parcels. His son lives on adjacent property and his aunt lives across the street.
16. The Board found that Mr. Carney stated that the structures were constructed some time ago and that the need for the variances was not created by the Applicant.
17. The Board found that Mr. Carney stated that the Applicant intends to enter into a proper ground lease for the operation of the agricultural business and to separate the residence from the business for liability purposes.
18. The Board found that no parties appeared in support of or in opposition to the Application.
19. The Board tabled its decision on the Application until October 16, 2017, at which time the Board discussed and voted on 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 found credible, persuasive, and un rebutted, the 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 10.49 acres as shown on the survey, is unique as it a large but oddly shaped lot. The Property only has limited road frontage of 268.84 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 into two parcels. The Applicant intends to retain the front portion of the Property consisting of 1.5541 acres for an existing dwelling and pool and to separate the rear portion of the Property consisting of 8.936 acres for several barns and related agricultural structures. The rear portion of the Property ("the Remaining Parcel") will be accessed by an existing private farm road known as Esham Lane. The Property is unique because the existing barn near Esham Lane has been in its present location for many years but is located too close to the proposed property line subdividing the two lots. In order to meet other necessary subdivision and setback requirements, the property line cannot otherwise be located. These unique conditions have, thus, created an exceptional practical difficulty for the Applicant.
  - 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 unique conditions of the Property. 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 Applicant to reasonably subdivide the Property and to separate the residential portion of the Property from the agricultural portion of the Property. The survey attached to the Application confirms that the subdivision is reasonable. The variances for the barn are necessary to enable reasonable use of the Property. The barn has been on the Property for many years but is located too close to the proposed new property lines and cannot remain in its existing location without a variance.

- 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 and has existed in its current form for many years. Notably, the Property is quite large and could easily service a residential lot and an agricultural lot but the unique development of the Property and its odd shape have made it impossible for the Applicant to subdivide the Property while still meeting the setback requirements. 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 variances for the existing barn were not opposed by any neighbors and no complaints about its location were noted in the record. The lack of evidence about the location of the barn is telling since the barn has been in its existing location for many years. The Applicant does not propose to further develop the Property. Rather, he only seeks permission to separate the Property into two lots while retaining the existing structures. No evidence was presented which would indicate 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 the Applicant must also receive approval from the Planning & Zoning Commission before formally subdividing the Property. This step in the zoning process should also serve to protect the character of the neighborhood.
- e. The variances sought are the minimum variances necessary to afford relief and the variances requested represent the least modifications possible of the regulation at issue. The Applicant has demonstrated the variances will allow the Property to be subdivided into two lots. The lots are proposed to be divided in such a way as to minimize the need for the variances on the lots while still providing necessary lot frontage. The only variances needed are for the barn and the variances for the barn are the minimum variances necessary to afford relief as the variances will allow the barn to remain in its present location. No additions to the barn are being proposed.

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. Bruce Mears, Mr. John Mills, and Mr. Brent Workman. No Board Member voted against the Motion to approve the variance application. Ms. Ellen Magee did not participate in the discussion or vote on 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 December 19, 2017.