

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

**IN RE: FREDERICK ENGLISH & DARLENE M. ENGLISH**

**(Case No. 12031)**

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 a variance from the minimum lot width requirement.

Findings of Fact

The Board found that the Applicants are seeking a variance of 78.86 feet from the 150 feet road frontage requirement for Tract 4 of a proposed subdivision. This application pertains to certain real property located on the south side of Laurel Road (Route 24), approximately 606 feet west of Old Stage Road (Road 461) (911 Address: None Available); said property being identified as Sussex County Tax Map Parcel Number 3-32-2.00- 76.00.

1. The Board was given copies of the Application, a survey of the Property dated June 23, 2017, and a portion of the tax map.
2. The Applicants propose to subdivide the Property into 4 parcels (Tracts 1-4). Tracts 1-3 are located off Old Stage Road and Tract 4 is located off Route 24. This application pertains to Tract 4.
3. The Board found that the Office of Planning & Zoning received no correspondence in support of or in opposition to the Application.
4. The Board found that Ed Higgins and Frederick English were sworn in to testify about the Application.
5. The Board found that Mr. Higgins testified that the Property would be subdivided into four (4) parcels and the variance is needed for the proposed Tract 4.
6. The Board found that Mr. Higgins testified that the Applicants are seeking a variance for a single-lane entrance off Route 24.
7. The Board found that Mr. Higgins testified that the Applicants have received a letter of no objection from the Delaware Department of Transportation ("DelDOT").
8. The Board found that Mr. English testified that Tracts 1-3 will meet the lot width requirement along Old Stage Road.
9. The Board found that Mr. English testified that Tract 4 consists of approximately 14 acres.
10. The Board found that Mr. English testified that the Property will not be further developed.
11. The Board found that Mr. Higgins testified that the subdivision will be used for single-family home lots. The Property was previously farmland.
12. The Board found that Mr. English testified that there was previously a house on Tract 4 and his grandmother subdivided lots from the original parcel in the 1950s.
13. The Board found that Mr. English testified that his grandmother subdivided the lots along Route 24 leaving the narrow strip of the Property along Route 24 and the narrow strip of the Property on Route 24 has existed since the 1950s.
14. The Board found that Mr. English testified that the Property only has limited frontage along Route 24.
15. The Board found that Mr. English testified that a road has existed there for many years.

16. The Board found that Mr. English testified that the Property is unique as the Property has an irregular shape and an existing road. The road was recorded in the 1940s.
17. The Board found that Mr. English testified that the Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code.
18. The Board found that Mr. English testified that the exceptional practical difficulty was not created by the Applicants.
19. The Board found that Mr. English testified that the variance will not alter the essential character of the neighborhood.
20. The Board found that Mr. English testified that he has spoken with neighbors about the variance.
21. The Board found that no parties appeared in support of or in opposition to the Application; though Claudia Downs appeared to question where the road would be located.
22. 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 Applicants seek to subdivide a large parcel into four lots. The proposed parcel identified as Tract 4, which borders Route 24, is the subject of this application.
  - b. The Property, which consists of 34.435 acres as shown on the survey, is unique as it a large but oddly shaped lot with frontage along two roads at different points. The Property is part of a larger parcel which was subdivided in the 1950s. There are lots located along Route 24 and Old Stage Road. The Property has access points at three different locations along Old Stage Road and the Property has a narrow access strip measuring 71.14 feet wide along Route 24. This narrow strip is the road frontage for the proposed Tract 4 and has existed in its current form since the 1950s. A road has been located along this strip of land and provides access to the Property from Route 24. While the Property is large and could easily be subdivided into four lots, the Property does not meet the road frontage requirements for this subdivision. The Board is convinced that the Property would otherwise be able to be subdivided if not for the unique physical conditions of the Property. These unique physical conditions have, thus, created an exceptional practical difficulty for the Applicants.
  - c. Due to the uniqueness of the Property, the Property cannot be subdivided in strict conformity with the Sussex County Zoning Code. The Applicants seek to subdivide the Property into four large lots but are unable to do so without violating the Sussex County Zoning Code due to the narrowness of the access along Route 24. The Board is convinced that the proposed subdivision of the Property is reasonable and that the variance requested are necessary to enable the reasonable use of the Property as the variance will allow the Applicants to reasonably subdivide the Property. The survey attached to the Application confirms that the subdivision is reasonable. The Board notes that the access along Route 24 has been 71.18 feet wide for many years and this proposed subdivision will not reduce the width of this access. The Board also notes that the proposed Tracts 1-3 will meet the lot width requirement.
  - d. The exceptional practical difficulty was not created by the Applicants. The Property was originally subdivided in the 1950s and that subdivision resulted in an oddly shaped, but large, parcel with multiple access points along Old Stage Road and Route 24. The access point along Route 24 is

particularly narrow and, though the width of that access point will not change as a result of this subdivision, a variance is needed in order to subdivide the Property. No evidence was presented that the size of the access point along Route 24 has changed since the implementation of the lot width requirement in the Sussex County Zoning Code. Furthermore, the Property has four separate entrances and can otherwise accommodate a subdivision into four lots. 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.

- e. 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 Board notes that no complaints about the access point along Route 24 were noted in the record. The lack of evidence about the width of that access point is telling since the access point has been 71.17 feet wide for several decades. No evidence was submitted into the record demonstrating that the variance would somehow alter the essential character of the neighborhood or be detrimental to the public welfare. The Property will be subdivided into four large lots; Tract 4 being the largest of the four lots. The lots proposed by the Applicants are far larger than other nearby lots. The Board was simply not convinced that the proposed subdivision of the Property would somehow alter the essential character of the neighborhood or be detrimental to the public welfare.
- f. 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 Applicants have demonstrated that the variance sought will allow the Applicants to subdivide the Property into four lots. The lots are proposed to be divided in such a way as to minimize the need for variances on the lots and the Applicants have no plans to further subdivide the Property.
- g. The Board notes that the Applicant must also receive approval for the subdivision from the Sussex County Planning & Zoning Commission.

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 12, 2017.