

**BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY
IN RE: GLENVILLE HOLLOW FARMS**

(Case No. 12149)

A hearing was held after due notice on June 4, 2018. The Board members present were: Mr. Dale Callaway, Mr. Bruce Mears, Ms. Ellen Magee, Mr. John Mills, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for variances from the minimum road frontage requirement for a proposed minor subdivision.

Findings of Fact

The Board found that the Applicant is seeking seeks a variance of 25.81 feet from the 150 feet minimum road frontage requirement for proposed Lot 1 and a variance of 32.11 feet from the 150 feet minimum road frontage requirement for proposed Lot 2. This application pertains to certain real property on the east side of Conrail Road, approximately 3,104 feet south of Hearn's Pond Road. (911 Address: None Available); said property being identified as Sussex County Tax Map Parcel Number 3-31-3.00-138.00.

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 subdivision survey plan dated June 29, 2017.
2. The Board found that the Office of Planning & Zoning received no correspondence in support of the Application or in opposition to the Application.
3. The Board found that Cynthia Yingling was sworn in to testify about the Application. Michael McGroerty, Esquire, presented the Application on behalf of the Applicant and submitted exhibits for the Board to review. The exhibits included a plot of the proposed subdivision and a picture.
4. The Board found that Mr. McGroerty stated that the property has an irregular shape because two homes interrupt the road frontage of the Property. Those lots were already created prior to the Applicant's acquisition of the Property.
5. The Board found that Mr. McGroerty stated that the dotted lines on the survey show the path of the irrigation.
6. The Board found that Mr. McGroerty stated that the Applicant wants to subdivide the Property because the small pieces cannot be irrigated for farming. The rest of the Property is used for growing corn and, since the Applicant cannot farm that area, the Applicant intends to subdivide and sell the Property.
7. The Board found that Mr. McGroerty stated that the subdivision makes the most economical sense.
8. The Board found that Mr. McGroerty stated that the Applicant will retain fifty (50) feet of the road frontage to continue to use as farm access.
9. The Board found that Mr. McGroerty stated that there is a low point in the front of the property that is not being subdivided because it is so low.
10. The Board found that Mr. McGroerty stated that the exceptional practical difficulty has not been created by the Applicant and that the irregular shape of the property has created the difficulty.
11. The Board found that Mr. McGroerty stated that the property being subdivided is not practical to otherwise be developed or profitable to farm. It is difficult to till and plant those areas due to the narrowness and the neighboring properties.
12. The Board found that Mr. McGroerty stated that the variances will not alter the essential character of the neighborhood and the requests are consistent with the neighborhood. The neighboring property owned by the Barr family is 124.8 feet wide.

13. The Board found that Mr. McGroerty stated that the variances are the minimum variances necessary to afford relief.
14. The Board found that Ms. Yingling affirmed the statements made by Mr. McGroerty as true and correct.
15. The Board found that Ms. Yingling testified that the Applicant purchased the Property about two years ago and the Applicant had been farming the Property even before the purchase. She believes that it is difficult to till the area due to the location of the house.
16. The Board found that Ms. Yingling testified that the neighboring homes have existed prior to the Applicant's purchase of the property
17. The Board found that David Nolan, Karen Andrews, and Gladys Robinson were sworn in and had questions about the Application. They were each undecided on their stance on the Application. Ms. Andrews testified that she bought her home in 1989 and that the existing parcels have been there for many years.
18. The Board found that Ms. Yingling testified that the fifty (50) feet driveway is the only vehicular access to the rear field and is an existing lane and that they need to keep the fifty (50) feet easement because it is the inlet and outlet for farm equipment. The portion of the remaining property closest to County Road 546 consists of lowlands and cannot be driven over.
19. The Board found that no parties appeared in support of or 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 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 Applicants seek to subdivide a large parcel into three lots. The subdivision includes 2 smaller parcels near County Road 546 which are identified as Lots 1 and 2 on the proposed subdivision survey. The variance requests pertain to Lots 1 and 2 and no variances are needed for the remaining lands.
 - b. The Property, which consists of 43.41 acres as shown on the tax map, is unique as it a large but oddly shaped lot with disjointed frontage along County Road 546. Two other lots already exist along County Road 546 and disrupt the Property's road frontage. The two lots appear to have been created many years ago as a neighbor testified that they have been in existence since at least 1989. The Applicant seeks to create 2 additional lots which will be near the 2 existing lots. The 2 existing lots have created an exceptional practical difficulty for the Applicant. The Applicant farms the remainder of the Property but is unable to properly irrigate the portions of the land which are near the existing lots. This inability to irrigate is due to the location of the 2 existing lots. As such, the areas where the proposed Lots 1 and 2 are to be located are difficult for the Applicant to practically use. Rather than farm those areas, the Applicant seeks permission to subdivide them into 2 lots. An existing farm road would be retained because the southwest corner of the Property is low and cannot handle large equipment. Based on these factors, 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 Applicant.
 - c. Due to the uniqueness of the Property, the Property cannot be subdivided in strict conformity with the Sussex County Zoning Code. The Applicant seek to subdivide the Property into three lots but is unable to do so without violating the Sussex County Zoning Code due to the narrowness of the

access along Road 546 and the low portion of the Property in the southwest corner. 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. The survey attached to the Application confirms that the subdivision is reasonable.

- d. The exceptional practical difficulty was not created by the Applicant. The Property was originally subdivided by a prior owner and that subdivision resulted in an oddly shaped, but large, parcel with multiple access points along Road 546. The access points along Road 546 are disjointed. The prior subdivision has created an oddly shaped property which is difficult to farm. The southwest corner of the Property is also exceptionally low thereby making it difficult to access the Property from Road 546. These 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.
- e. 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 Board notes that no complaints about the access point for Lot 2 were noted in the record. The lack of evidence about the width of that access point is telling since the road frontage along the portion of the Property that will now be Lot 2 has been 127.29 feet for many years. The lot width of that portion of the Property will not change as a result of this subdivision. Lot 1 will be narrower than Lot 2 but Lot 1 is substantially wider in the rear of the Property. Both Lot 1 and 2 have a similar amount of road frontage as the intervening lot owned by the Barr family – which lot is only 124.80 feet wide. No evidence was submitted into the record demonstrating that the variances would somehow alter the essential character of the neighborhood or be detrimental to the public welfare.
- f. 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 that the variances sought will allow the Applicant to subdivide the Property into three lots. The lots are proposed to be divided in such a way as to minimize the need for variances on the lots and the Applicant has no plans to further subdivide the Property.

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. Bruce Mears, Mr. John Mills, and Mr. Brent Workman. No Board Members voted against the Motion to approve the variance application.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY


John Mills
Chairman

If the use is not established within two (2) years from the date below the application becomes void.

Date August 7, 2018