

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

**IN RE: GERALD RICHARDSON**

**(Case No. 12174)**

A hearing was held after due notice on August 6, 2018. The Board members present were: Mr. Dale Callaway, Ms. Ellen Magee, 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 for a proposed subdivision.

Findings of Fact

The Board found that the Applicant is seeking was seeking a variance of 26.64 feet from the 150 feet lot-width requirement for a parcel in a proposed subdivision. This application pertains to certain real property located on the south side of Omar Road, approximately 662 feet west of Powell Farm Road (911 Address: 34152 Omar Road, Frankford); said property being identified as Sussex County Tax Map Parcel Number 1-34-11.00-89.00.

1. The Board was given copies of the Application, a portion of the tax map of the area, an aerial photograph of the Property, Findings of Fact for Case No. 11804, and a survey of the Property dated November 30, 2015.
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 Gerald Richardson was sworn in to testify about the Application.
4. The Board found that Mr. Richardson testified that he plans to subdivide his property to build a home for his son. The Board previously approved the request two years ago but he did not record the survey within one year as required.
5. The Board found that Mr. Richardson testified that the Property is unique because it is narrow. The rear yard is wider than the front yard. The narrow end fronts on County Road 54 which results in limited road frontage and makes compliance with the County Code impossible.
6. The Board found that Mr. Richardson testified that the Property is 2.89 acres which is large for a property with only one dwelling.
7. The Board found that Mr. Richardson testified that the Property has 273.36 feet of frontage and the Property cannot be otherwise developed without a variance to allow a parcel with a road frontage of 123.36 feet.
8. The Board found that Mr. Richardson testified that this situation was not created by the Applicant as this was the lot size and shape of the Property when purchased the lot.
9. The Board found that Mr. Richardson testified that this request will not alter the essential character of the neighborhood nor will it substantially adversely affect the uses of adjacent properties. There are numerous properties in the area zoned MR which have road frontage of less than 150 feet.
10. The Board found that Mr. Richardson testified that he is requesting the minimum variance amount of 26.64 feet which will allow the creation of parcel A of 1.25 acres as shown on the survey.
11. The Board found that Mr. Richardson testified that the lot will be large enough to allow for the construction of a dwelling within the building envelope.
12. The Board found that Mr. Richardson testified that the existing shed will be removed.

13. The Board found that no parties appeared in support of or in opposition to the Application
14. 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, which consists of 2.89 acres as shown on the survey, is unique as it a large but narrow lot. The Property only has road frontage of 273.36 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 Applicant did not create the unique size and shape of the Property. No evidence was presented that the lot's size and shape has changed since the implementation of the lot width requirement in the Sussex County Zoning Code. Notably, 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 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 – one of which will meet the necessary lot width requirement and one of which will be slightly smaller than the lot width requirement. The un rebutted evidence confirms that there are other lots in the neighborhood which are less than 150 feet wide and 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 the variance will allow the Property to be subdivided into two lots. The proposed subdivision will include one lot which will meet the lot width requirement but not be wider than the minimum requirement. By limiting the size of the lot which will 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. 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 October 2, 2018