

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: ROMAN MORALES & RUBICELA MORAN-MORALES

(Case No. 12217)

A hearing was held after due notice on October 15, 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 variances from the front yard setback requirement for existing structures and variances from the minimum road frontage requirement for a proposed subdivision.

Findings of Fact

The Board found that the Applicants are seeking a variance of 25.1 feet from the forty (40) feet front yard setback requirement for an existing dwelling, a variance of 40 feet from the forty (40) feet front yard setback requirement for an existing covered porch, a variance of 5.6 feet from the minimum road frontage requirement of 150 feet for proposed Lot 1, and a variance of 5.6 feet from the minimum road frontage requirement of 150 feet for proposed Lot 2. The Applicants propose to subdivide the Property into two lots identified as Lot 1 and Lot 2. This application pertains to certain real property on the north side of Nine Foot Road, approximately 0.32 miles southwest of DuPont Boulevard (Route 113) (911 Address: 28007 Nine Foot Road, Dagsboro); said property being identified as Sussex County Tax Map Parcel Number 2-33-10.00-75.00.

1. The Board was given copies of the Application, assessment records, a letter of no objection from the Delaware Department of Transportation ("DelDOT"), a survey of the Property dated January 15, 2018, an aerial photograph of the Property, and a portion of the tax map of the area.
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 Roman Morales and Rubicela Moran-Morales were sworn in to testify about the Application. Shannon Carmean Burton, Esquire, presented the case on behalf of the Applicants and submitted an exhibit booklet to the Board.
4. The Board found that Mrs. Burton stated that the house is non-conforming. The Property was developed in the 1970s with a dwelling and 3 accessory buildings.
5. The Board found that Mrs. Burton stated that the Property is zoned Agricultural-Residential.
6. The Board found that Mrs. Burton stated that the lot is unique because it is unusually shaped and oversized.
7. The Board found that Mrs. Burton stated that the Property consists of over 5 acres and could easily service 2 dwellings but the Property is too narrow to be subdivided without the variances. The Property needs to be 300 feet wide to subdivide.
8. The Board found that Mrs. Burton stated that the exceptional practical difficulty was not created by the Applicants. The Applicants purchased the Property in its current condition in October 2012.
9. The Board found that Mrs. Burton stated that the Property cannot otherwise be reasonably developed and that the variances are necessary to afford reasonable use of the Property.
10. The Board found that Mrs. Burton stated that the variances will not alter the character of the neighborhood as there are other homes in the area with less than 150 feet of road frontage.

11. The Board found that Mrs. Burton stated that the variances will not be detrimental to the public welfare.
12. The Board found that Mrs. Burton stated that the lots will be larger than required by the Code.
13. The Board found that Mrs. Burton stated that a nearby lot is less than 150 feet wide.
14. The Board found that Mrs. Burton stated that DeIDOT has no opposition to the request. Access to both lots will be from Lot 1.
15. The Board found that Mrs. Burton stated that the variances requested are the minimum variances necessary to afford relief.
16. The Board found that Ms. Moran-Morales affirmed the statements made by Mrs. Burton as true and correct. Ms. Moran-Morales testified that they are not allowed to build in the tax ditch and that the carport was added to the building four years ago with a permit.
17. The Board found that Ms. Moran-Morales testified that the septic system is located in the front yard and the well is located in the rear yard.
18. The Board found that Ms. Moran-Morales testified that the Applicants have cleaned out some of the structures on the Property.
19. The Board found that Ms. Moran-Morales testified that there is approximately 10-15 feet from the front yard property line and the edge of paving of Nine Foot Road.
20. The Board found that Nancy Carter was sworn in to give testimony in opposition to the Application.
21. The Board found that Ms. Carter testified that neighboring properties have 150 feet of road frontage and that any lots with less than 150 feet of road frontage would affect neighboring property values. Ms. Carter's lot, however, is only 120 feet wide.
22. The Board found that Ms. Carter testified that the Applicants' house has been remodeled.
23. The Board found that Ms. Carter testified that she does not think the Property should be subdivided.
24. The Board found that no parties appeared in support of the Application and one (1) person appeared in opposition to the Application.
25. The Board tabled the Application until November 5, 2018, at which time the Board discussed and voted on the Application.
26. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, which the Board weighed and considered, 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 is unique as it is a large lot with a narrow width in the front yard. Due to this unique condition, the Applicants are unable to subdivide the Property and still meet the lot width requirement. The Property is also unique due to the location of tax ditches and these tax ditches render significant portions of the building envelope unusable. Consequently, the dwelling and porch, which have been on the Property for many years, encroach into the front yard setback area. The subdivision of the Property also results in a portion of the front yard being dedicated to DeIDOT for future road expansion. These unique conditions have created an exceptional practical difficulty for the Applicants.
 - b. Due to the uniqueness of the Property, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Applicants seek to retain an existing dwelling, covered porch, and steps but are unable to do so without violating the Sussex County Zoning Code. The Board is convinced that the variances are necessary to enable the reasonable use of the Property as the variances will allow the existing dwelling, covered porch, and steps to remain on the Property. The Board is also convinced

that the shape and location of the existing dwelling, covered porch, and steps are reasonable, which is confirmed when reviewing the survey provided by the Applicants. The Property also cannot be subdivided without a variance due to the narrow width of the Property and the variances are necessary to enable the reasonable subdivision of the Property.

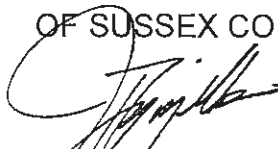
- c. The exceptional practical difficulty was not created by the Applicants. There was no evidence that the Applicants created the lot or placed the dwelling, porch, and steps on the lot. Rather, those conditions predated the Applicants' ownership of the Property. The building envelope is limited by the tax ditches and the location of those tax ditches have created the exceptional practical difficulty as well. The Board also notes that the Property's narrow width limits the Applicant's ability to subdivide the Property even though it is a large lot that would otherwise meet the subdivision requirements. It is clear to the Board that the exceptional practical difficulty was not created by the Applicants.
- 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 Board is convinced that the existing dwelling, covered porch, and steps will have no effect on the character of the neighborhood. The Property is located in an agricultural area and there was no evidence of any impact on neighboring properties. Importantly, the Applicant stated that he has received no complaints about the structures and no complaints were noted in the record either. The Board also notes that the record indicates a gap between the front property line and the edge of paving of the adjacent road. As such, the encroachments into the front yard setback area are likely less noticeable than if the edge of paving matched the front property line. The Board also notes that the opposition presented concerns about the width of the lots created by the subdivision but the proposed lots will be significantly wider than the opposition's own lot. The opposition presented speculative concerns about the impact on property values but provided no substantive evidence to support those concerns. The Board is simply not convinced that 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.
- 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 Applicants have demonstrated that the variances sought will allow the Applicants to retain an existing dwelling, covered porch, and steps on the Property. No additions or modifications to those structures are proposed. The Applicants also demonstrated that the variances will allow the Applicants to reasonably 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 Member 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 January 8, 2019.