

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: BROOKE WARD

(Case No. 12232)

A hearing was held after due notice on November 19, 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.

Findings of Fact

The Board found that the Applicant is seeking a variance of 33.35 feet from the 150 feet minimum road frontage requirement for a parcel. This Application pertains to a parcel identified as Parcel A on a subdivision plan dated January 22, 2018, and which is further identified as certain real property located on the west side of Double Fork Road, approximately 0.51 miles south of Hickman Road (911 Address: Not Available); said property being identified as Sussex County Tax Map Parcel Number 5-30-2.00-25.05.

1. The Board was given copies of the Application, a portion of the tax map of the area, an aerial photograph of the Property, a survey dated September 26, 2017, a DeIDOT entrance permit, a legal description for the Property, and a subdivision plan dated January 22, 2003.
2. The Board found that the Office of Planning & Zoning received one letter in support of the Application and no correspondence in opposition to the Application.
3. The Board found that Drew Ward was sworn in to testify about the Application.
4. The Board found that Mr. Ward testified that the Applicant purchased this lot and the neighboring lot as investment properties. The Applicant improved the neighboring property with a dwelling and sold it.
5. The Board found that Mr. Ward testified that the Property is a non-conforming lot and, that, during the process of selling the neighboring lot, the Applicant discovered that the lot in question was not a buildable lot as it did not meet the requirement for minimum road frontage. The Property does, however, have a separate tax map number and has been taxed separately for the past 15 years.
6. The Board found that Mr. Ward testified that the Applicant can build a home similar to the home on the neighboring property without a variance and DeIDOT has approved access to the Property.
7. The Board found that Mr. Ward testified that the uniqueness of the Property is that it does not meet the requirement for minimum road frontage.
8. The Board found that Mr. Ward testified that the Property cannot otherwise be developed without the variance as it has been declared as unbuildable.
9. The Board found that Mr. Ward testified that the exceptional practical difficulty was not created by the Applicant as it was purchased by her in 2017.
10. The Board found that Mr. Ward testified that the variance will not alter the essential character of the neighborhood.
11. The Board found that Mr. Ward testified that the variance requested is the minimum variance requested to meet the 150 feet minimum road frontage requirement and other lots in the area have less than 150 feet of road frontage.
12. The Board found that Linda Ward was sworn in to give testimony in opposition to the Application. Ms. Ward owns the neighboring lot which was sold to her by the Applicant. She does not want a house that close to her and believes that the Applicant should have 150 feet of road frontage to place a dwelling on this property. She noted that there are other homes in the area with less than 150 feet of road

frontage but they are some distance away and all the homes in this location have the 150 feet minimum road frontage.

13. The Board found that no one appeared in support of and one person appeared 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 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 separately taxed parcel with separate ownership from other neighboring lots but the Property is not large wide enough to allow for a buildable lot. This situation is clearly unique and the issue predates the Applicant's ownership of the lot. The lot is simply too narrow to meet the lot width requirements. It is, thus, clear to the Board that these unique characteristics of the Property have created an exceptional practical difficulty for the Applicant.
 - b. Due to the Property's unique conditions, the Property does not exist in strict conformity with the Sussex County Zoning Code. The Applicant seeks to use the lot for building 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 Property is reasonable in size and that the variance requested is necessary to enable the reasonable use of the Property as the variance will allow the Applicant to build a dwelling on 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 Property has a unique size and shape. While the Property is nearly 1 acre in size, the Property is too narrow along Double Fork Road to meet the lot width requirement. The unique characteristics of the Property are clear when reviewing the survey and tax map. The Board is convinced that these unique conditions have created an exceptional practical difficulty for the Applicant. Notably, the Applicant purchased the Property after the Property was created as a separately taxed parcel.
 - 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 already exists as a separate lot with separate ownership and has existed as a separate tax parcel for 15 years. No evidence was presented that convinced the Board that the width of the Property would somehow alter the essential character of the neighborhood or be detrimental to the public welfare. The opposition complained about the possibility of the Property being used for a dwelling but the Applicant clearly stated that a dwelling can be constructed on the lot in compliance with the setback requirements. The evidence is also clear that there are other lots in the area which are less than 150 feet wide.
 - 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 that the variance will allow the Property to be used for a building lot. The size of the lot will not be changed as a result of this variance.

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 January 29, 2019