

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: LOIS LEE REHKAMP

(Case No. 12259)

A hearing was held after due notice on January 28, 2019. The Board members present were: Mr. Dale Callaway, Mr. John Mills, Mr. Bruce Mears, Mr. Brent Workman, and Ms. Ellen Magee.

Nature of the Proceedings

This is an application for variances from the minimum road frontage requirement, minimum lot depth and width requirements, minimum lot area, front yard setback, side yard setback and corner front yard setback requirements for existing structures (Sections 115-74 and 115-182 of the Sussex County Zoning Code).

Findings of Fact

The Board found that the Applicant is seeking variances from the minimum road frontage requirement, minimum lot depth and width requirements, minimum lot area, front yard setback, side yard setback and corner front yard setback requirements for existing structures (Sections 115-74 and 115-182 of the Sussex County Zoning Code) a on a parcel of land zoned B-1. The property is identified as Sussex County Tax Map and Parcel Number 2-35 4.13 102.00, with a 911 address of 2 South Bay Shore Drive, Milton, Delaware. The Applicant proposes to subdivide the Property into 2 lots identified as "Proposed Lot 1" and "Proposed Lot 3" as shown on a survey submitted by the Applicant.

After the hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a survey of the property, a survey of the property marked by Staff showing the location and details of the requested variances, a written submission by the Applicant, the "First Codicil to the Last Will and Testament of Marian J. Koehler", a copy of the deed to the property, a copy of the "Site Evaluation Plot Drawing" and related notes, aerial photographs of the property, ground-level photographs of the property, photocopies of portions of the plot of "Old Broadkill Beach", a portion of the archived tax maps of the property, and a portion of the current tax map of the area.
2. Jamie Whitehouse, of Sussex County, described the case and stated that the Office of Planning and Zoning has received no letters in opposition to the Application.
3. Mr. Whitehouse explained that the Applicant is seeking variances from the minimum road frontage requirement, minimum lot depth and width requirements, minimum lot area, front yard setback, side yard setback and corner front yard setback requirements for existing structures (Sections 115-74 and 115-182 of the Sussex County Zoning Code) a on a parcel of land zoned B-1.
4. The Board found that the Applicant is seeking:
 - a) A 26.04 ft. variance from the 100 ft. lot depth for a commercial parcel in the B-1 zoning district for Proposed Lot 3.
 - b) A 42.3 ft. variance from the required 60 ft. front yard setback for an existing store on Proposed Lot 3.
 - c) A 1,938 sq. ft. variance from the required 10,000 sq. ft. lot size for Proposed Lot 3.
 - d) A 25.53 ft. variance from the required 100 ft. lot depth for a commercial parcel for Proposed Lot 3.
 - e) A 94.49 ft. variance from the required 150 ft. lot width for a proposed lot fronting onto a numbered road on Proposed Lot 1.

- f) A 0.1 ft. variance from the required 15 ft. corner front setback for an existing dwelling on Proposed Lot 1.
 - g) A 3,612 sq. ft. variance from the required 10,000 sq. ft. lot size requirement for a dwelling in the B-1 zoning district for Proposed Lot 1.
 - h) 7 ft. variance from the required 10 ft. side yard setback on the southwest side for landing and steps on Proposed Lot 1.
 - i) A 45.33 ft. variance from the required 150 ft. lot width for a proposed parcel fronting a numbered road for Proposed Lot 3.
- 5. Lois Rehkamp was sworn in and testified as the Applicant.
 - 6. Shannon Carmean Burton, Esq. presented the Application on behalf of the Applicant. Ms. Rehkamp affirmed Ms. Burton's presentation.
 - 7. The Board found that Ms. Rehkamp is the executrix of the of the Estate of Marian Koehler and that Marian Koehler was Ms. Rehkamp's mother.
 - 8. The Board found that Marian Koehler intended that the property would be subdivided following her death, and that wish is reflected in her First Codicil to her Last Will and Testament.
 - 9. The Board found that the subject property was originally two lots, as reflected in the deed to the property identifying it as "Lot 1 and Lot 3 in [sic] subdivision known as Old Broadkill Beach.
 - 10. The Board found that the subject property was identified as two separate lots on the plot of "Old Broadkill Beach" and also the archived tax maps of the area.
 - 11. The Board found that there is currently a retail store on one side of the property and a residential dwelling on the other side of the property.
 - 12. The Board found that the store is over 60 years of age and is a fixture of the Broadkill Beach area, having been moved to its current location in the 1940s or 1950s.
 - 13. The Board found that the dwelling has been in existence for at least 20 years on the property.
 - 14. The Board found that the survey shows that the property is 14,449 square feet in size and is a corner lot.
 - 15. The Board found that Ms. Rehkamp testified that the need for the variances was not created by her and that she inherited the property in its current configuration and that it is her desire to carry out the instructions in her mother's will and return the property to two separate lots.
 - 16. The Board found that Ms. Rehkamp testified that the variances will not alter the character of the neighborhood since the store and dwelling have been in existence for decades.
 - 17. The Board found that there was testimony from Ms. Rehkamp that the variances are the minimum necessary to maintain the long-time uses of the property once it is subdivided.
 - 18. The Board found that no parties appeared in opposition to the Application.
 - 19. The Board found that eight people appeared in support of the Application.
 - 20. The Board found that each of the variances is necessary to subdivide the property and allow the existing structures to remain, and therefore all of the variance requests could be acted upon simultaneously.
 - 21. Based on the findings above and the testimony and evidence presented during the Public Hearing and contained in the Public Record, the Board determined that variances from the minimum road frontage requirement, minimum lot depth and width requirements, minimum lot area, front yard setback, side yard setback and corner front yard setback requirements for existing structures (Sections 115-74 and 115-182 of the Sussex County Zoning Code) a on a parcel of land zoned B-1 should be granted as follows:

- (a) The applicant is seeking to return the property to two separate lots as originally plotted and recognized by Sussex County according to old tax maps.
- (b) Two structures currently exist on the property, including a store that has been in existence for at least 60 years and a dwelling that has been in existence for at least 20 years.
- (c) Based on the existence and location of the structures upon the lots and the nonconforming nature of sizes and dimensions on the lots, multiple variances are necessary.
- (c) Several people appeared in support of the Application.
- (d) No one appeared in opposition to the Application.
- (e) The property is unique for the following reasons
 - (i) It previously existed as two lots according to the original plots and archived Sussex County Tax Maps.
 - (ii) The property has a triple frontage, with two corners creating unique and unusual setback requirements under the Code that make development of the lots difficult without reasonable variances.
 - (iii) The property is the location of the Broadkill Store, which is a 60- year old fixture of Broadkill Beach. The continued existence of this historical and unique store on this property requires multiple variances.
- (f) The property cannot otherwise be developed without the variances for the following reasons:
 - (i) The property was originally two separate lots which were nonconforming in size and other dimensions by current Code standards.
 - (ii) There are two existing structures on the property which cannot become conforming without the requested variances.
 - (iii) The prior owner of the property is deceased, and directed in her Last Will and Testament that the property be subdivided to return it to its original configuration as closely possible as two lots. This cannot occur without the requested variances.
- (g) The need for the variances to return the property to two separate lots was not created by the Applicant for the following reasons:
 - (i) The property was originally two lots, as reflected in the deed to the property identifying it as "lot 1 and Lot 3 in the [sic] subdivision known as Old Broadkill Beach.
 - (ii) The subject property was originally identified as two separate lots on the plot of "Old Broadkill Beach".
 - (iii) The property was designated as two separate lots on the archived Sussex County Tax Maps long before the Applicant owned the property.
 - (iv) The need for the variances also relates back to the 1940s or 1950s when the Broadkill Store was moved onto the property, long before the Applicant owned the property.
 - (v) The single-family dwelling was placed upon the property long before the Applicant owned the property.
 - (vi) The need for the variances also relates to the prior owner's Last Will and Testament, which directed that the property be subdivided, returning it to its original configuration as two lots.
- (h) The variances will not alter the essential character of the neighborhood for the following reasons:
 - (i) The variances allow the property to return to how it was originally plotted as two separate lots, so it is consistent with the character of the neighborhood as originally plotted and developed decades ago.
 - (ii) The Broadkill Store which is situated on this property is part of the essential character of Broadkill Beach. Granting these variances to allow this store to remain preserves this character of Broadkill Beach.

- (iii) As a result of these variances, the existing structures will remain in their current location, with their current uses intact. There will not be any change from the current (and historic) status quo of the current character of Broadkill Beach as a result of these variances.
- (v) There was no evidence or testimony that granting the variances would adversely affect the character of the area.
- (i) The variances are the minimum necessary to afford relief to the Applicant because they will allow the Applicant to subdivide the property into 2 separate lots as originally plotted sufficient to allow the existing structures to remain on the lots.

Based on the foregoing, the Board approved the following variances:

- a) A 26.04 ft. variance from the 100 ft. lot depth for a commercial parcel in the B-1 zoning district for Proposed Lot 3.
- b) A 42.3 ft. variance from the required 60 ft. front yard setback for an existing store on Proposed Lot 3.
- c) A 1,938 sq. ft. variance from the required 10,000 sq. ft. lot size for Proposed Lot 3.
- d) A 25.53 ft. variance from the required 100 ft. lot depth for a commercial parcel for Proposed Lot 3.
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- h) 7 ft. variance from the required 10 ft. side yard setback on the southwest side for landing and steps on Proposed Lot 1.
- i) A 45.33 ft. variance from the required 150 ft. lot width for a proposed parcel fronting a numbered road for Proposed Lot 3.

Decision of the Board

Upon motion duly made and seconded, variances from the minimum road frontage requirement, minimum lot depth and width requirements, minimum lot area, front yard setback, side yard setback and corner front yard setback requirements for existing structures (Sections 115-74 and 115-182 of the Sussex County Zoning Code) were approved. The Board Members in favor of the approval were Mr. Dale Callaway, Mr. John Mills, Mr. Bruce Mears, Mr. Brent Workman, and Ms. Ellen Magee.

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.

Revised: April 15, 2019

Date April 16, 2019.