

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: TYRONE A. TULL

(Case No. 12281)

A hearing was held after due notice on March 4, 2019. The Board members present were: Mr. Dale Callaway, Ms. Ellen Magee, Mr. John Williamson, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for variances from the front yard setback requirement for existing structures.

Findings of Fact

The Board found that the Applicant is seeking a variance of 4.45 feet from the forty (40) feet front yard setback requirement for an existing dwelling, a variance of 13.45 feet from the forty (40) feet front yard setback requirement for an existing deck, and a variance of 15.45 feet from the forty (40) feet front yard setback requirement for an existing set of steps due to a proposed acquisition of land by the Delaware Department of Transportation. This application pertains to certain real property located on the west side of John J. Williams Highway (Route 24) approximately 170 feet north of Autumn Road (911 Address: 26142 John J. Williams Highway, Millsboro); said property being identified as Sussex County Tax Map Parcel Number 2-34-23.00-185.00.

1. The Board was given copies of the Application, a survey of the Property dated September 17, 2018, a letter from Terri Lawson of DeIDOT, 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 Tyrone Tull and Terri Lawson were sworn in to give testimony. Ken Feaster, Deputy Attorney General representing Delaware Department of Transportation, presented the application on behalf of the Applicant.
4. The Board found that Mr. Feaster stated that Mr. Tull has owned the Property since 2004 and that DeIDOT is acquiring a portion of the Property in order to widen the adjacent Route 24.
5. The Board found that Mr. Feaster stated that the need for the variance was created by DeIDOT.
6. The Board found that Mr. Feaster stated that the Property is unique because it did conform to setback requirements until the acquisition of some of the Property to the front of Mr. Tull's home.
7. The Board found that Mr. Feaster stated that the Property cannot otherwise be developed as the home is already in place on the Property and the variances are necessary to enable continued use of the Property. If not for DeIDOT's acquisition, Mr. Tull would be able to use the Property in compliance with the Code.
8. The Board found that Mr. Feaster stated that the Applicant has not caused the exceptional practical difficulty. Rather, the difficulty was created by DeIDOT.
9. The Board found that Mr. Feaster stated that the variances will not alter the essential character of the neighborhood. He also noted that the road improvements will benefit the public at large.
10. The Board found that Mr. Feaster stated that variances requested are the minimum variances necessary to afford relief and bring the Property back into compliance with County Code.

11. The Board found that Mr. Feaster stated that DeIDOT supports Mr. Tull's Application.
12. The Board found that Ms. Lawson, who is a DeIDOT representative, testified that most of the widening will be used for curbing and sidewalks on Mr. Tull's property.
13. The Board found that Mr. Tull testified that the deck and steps are open and that the shed will be moved into compliance with the Code. He also affirmed the statements made by Mr. Feaster as true and correct.
14. The Board found that no parties appeared in support of or in opposition to the Application.
15. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, which the Board found credible, persuasive, and un rebutted, 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 due to the taking by DeIDOT to expand the adjacent Route 24 for curbing and sidewalks. The Property, which is not a large lot, will be reduced in size from 22,500 square feet to 17,852 square feet. The Route 24 expansion reduces the front yard and creates a unique condition for the Applicant who seeks to retain an existing dwelling, steps, and deck on the lot. Those structures previously complied with the Sussex County Zoning Code until DeIDOT's acquisition. The Board also notes that the septic drainfield is located in the rear of the Property. These unique characteristics of this Property limit the buildable area available to the Applicant and have created an exceptional practical difficulty for the Applicant who seek to retain an existing dwelling, steps, and deck on the lot.
 - b. Due to the uniqueness of the lot, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property has a unique size and the buildable area thereof is limited due to its size. The Applicant seeks to retain an existing dwelling, steps, and deck on the lot but is 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 a reasonably sized existing dwelling, steps, and deck to remain on the lot. The Board is convinced that the shape and location of these structures are also reasonable, which is confirmed when reviewing the survey provided by the Applicant. The Board notes that these structures have been on the lot for quite some time and complied with the Code but the recent taking by DeIDOT has caused these structures to encroach into the front yard setback area.
 - c. The exceptional practical difficulty was not created by the Applicant. The Applicant did not create the unusual size of the Property and the Applicant did not cause Route 24 to be expanded. These conditions have resulted in a limited building envelope on the Property and the small building envelope has created the exceptional practical difficulty. The small building envelope was further limited by the location of the septic system. The unique characteristics of the Property are clear when reviewing the survey. The Board is convinced that the exceptional practical difficulty was not created by the Applicant but was created by the lot's unique characteristics and, more importantly, by DeIDOT's taking.
 - 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 structures will have no effect on the character of the

neighborhood. The structures have been on the Property for many years and no complaints were noted in the record about them. No evidence was presented that the variances would somehow alter the essential character of the neighborhood. The lack of evidence is telling since, if the existing dwelling, steps, and deck had somehow altered the essential character of the neighborhood, the Board would expect some evidence thereof. The Board also notes that the variances are the result of a taking by DeIDOT which will lead to traffic and other related improvements along Route 24 which should benefit the public and this neighborhood.

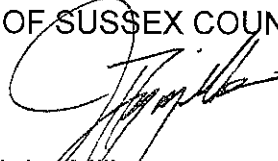
- e. The variances sought are the minimum variances necessary to afford relief and the variances requested represent the least modifications possible of the regulation at issue. The Applicant has demonstrated that the variances sought will allow the Applicants to retain an existing dwelling, steps, and deck. No additions or modifications to the existing dwelling, steps, and deck are proposed. The Board also notes that the Applicant will be moving a shed into compliance as the shed is movable. The moving of the shed evidences that the Applicant has attempted to reduce the need for variances.

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. John Williamson, and Mr. Brent Workman. Mr. John Mills did not participate in the discussion or vote of this 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 April 2, 2019.