

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: TAXI PROPERTIES, LLC

(Case No. 12348)

A hearing was held after due notice on August 19, 2019. The Board members present were: Dr. Kevin Carson, Mr. Jeff Chorman, Ms. Ellen Magee, and Mr. John Williamson.

Nature of the Proceedings

This is an application for a variance from the front yard setback requirements for existing structures.

Findings of Fact

The Board found that the Applicant is requesting a variance of 18.8 feet from the forty (40) feet front yard setback requirement for an existing porch, a variance of 21.8 feet from the forty (40) feet front yard setback requirement for existing steps, and a variance of 16 feet from the forty (40) feet front yard setback requirement for an existing dwelling. This application pertains to certain real property located on the west side of Zoar Road approximately 235 feet south of Wood Branch Road (911 Address: 22384 Zoar Road, Georgetown); said property being identified as Sussex County Tax Map Parcel Number 1-33-2.00-32.32. After a hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a survey of the Property dated July 3, 2019, a building permit application, 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 or in opposition to the Application.
3. The Board found that Jeffrey Workman was sworn in to give testimony about the Application.
4. The Board found that Mr. Workman testified that the Applicant owns the neighboring Lot 13 and built a house on that lot. The Applicant is constructing a house on this lot (Lot 11). Mr. Workman is not a builder.
5. The Board found that Mr. Workman testified that his building permit listed a front yard setback requirement of 30 feet but the front yard setback on the building permit for Lot 13 was 40 feet.
6. The Board found that Mr. Workman testified that he called the permitting office about the discrepancy and he believed he could move the house 10 feet closer.
7. The Board found that Mr. Workman testified that he measured from the edge of pavement instead of the actual property line and he added 10 feet to the measurement.
8. The Board found that Mr. Workman testified that the Property is unique because it is a shallow lot.
9. The Board found that Mr. Workman testified that the house has already been placed on the Property.
10. The Board found that Mr. Workman testified that the exceptional practical difficulty was not caused by the Applicant as he was given incorrect information from Sussex County Permitting Department.
11. The Board found that Mr. Workman testified that the Property is improved with well and septic. The septic will be located in the rear yard and the well is in the front south corner of the lot. The well has been installed but the septic system has not been installed.

12. The Board found that Mr. Workman testified that neighbors are fine with the request and that it will not alter the essential character of the neighborhood as it is a residential neighborhood. He noted that there have been no complaints from neighbors.
13. The Board found that Mr. Workman testified that the Property is well maintained.
14. The Board found that Mr. Workman testified that the variances are the minimum variances necessary to complete the dwelling and keep it in its current location.
15. The Board found that Mr. Workman testified that the lot is not deep and room is needed for the septic system. The septic lines run in the rear yard.
16. The Board found that Mr. Workman testified that the error was caught by the Planning & Zoning staff and he stopped work immediately. The house is framed, wired, and plumbed.
17. The Board found that Eric Sackett was sworn in to give testimony in opposition of the Application.
18. The Board found that Mr. Sackett testified that he lives opposite the Applicant's property.
19. The Board found that Mr. Sackett testified that the uniqueness of the Property was known to the Applicant prior to purchasing the Property.
20. The Board found that Mr. Sackett testified that a survey should have been completed prior to building.
21. The Board found that Mr. Sackett testified that the house could have been built smaller and the septic reconfigured.
22. The Board found that Mr. Sackett testified that the exceptional practical difficulty was created by the Applicant.
23. The Board found that Mr. Sackett testified that the variances will alter the essential character of the neighborhood as all the other houses on Zoar Road meet the front yard setbacks.
24. The Board found that Mr. Sackett testified that the Applicant's house is too close to the road and that DeIDOT has plans to make improvements to Zoar Road. He argued that, if the road has to be widened, the burden would be put on the property owners on the opposite side of the road because the Applicant has his house in the setbacks.
25. The Board found that Mr. Sackett testified that the variances requested are not the least modifications possible.
26. The Board found that Mr. Sackett testified that Applicant re-subdivided a larger parcel into 3 lots – including this property.
27. The Board found that Mr. Sackett testified that the well does not meet Code requirements.
28. The Board found that Mr. Workman testified that he does not consider himself a developer and that there is an error in the building permit.
29. The Board found that no one appeared in support of and one party appeared in opposition to the Application.
30. The Board voted to leave the record open for the limited purpose to allow staff to obtain copies of the building permit and associated documents to Board members for review. The Planning and Zoning staff thereafter provided the Board with copies of the building permit application and submissions related to that application. On September 16, 2019, the Board discussed and voted on the Application.
31. 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 failed to meet the standards for granting a variance. The findings below further support the Board's decision to deny the Application.
 - a. The Applicant failed to prove that the Property has some unique condition which has created an exceptional practical difficulty. Rather, the issue

appears to be entirely self-created by the Applicant. The lot consists of 20,103 square feet and appears large enough to house the dwelling or a reasonably-sized dwelling within the building envelope. Prior to construction of the home, the lot was vacant and the Applicant had a blank slate upon which to design and construct the dwelling. The need for the variance is not due to the Property's condition but due to the Applicant's construction of the dwelling and related structures in the building envelope.

- b. The Applicant failed to prove that a reasonably sized dwelling and related structures could not be built in strict conformity with the Sussex County Zoning Code. The Applicant argues that the Property has unique physical conditions and that, due to these conditions, the Property cannot be developed in strict conformity with the Code. The Board, however, was not convinced by this argument. The Property was vacant prior to the Applicant's construction of the dwelling and related structures and the Applicant failed to demonstrate that a smaller dwelling, which would otherwise meet the setback requirements, would not suffice for reasonable use of the Property. Prior to the construction of the dwelling, the Property was essentially a blank slate for the Applicant to design his dwelling in compliance with the Code. The Applicant, however, chose to build this structure in this location. While the Property has an angled rear yard property line, the lot consists of over 20,000 square feet and there appeared to be no unique condition which would require a variance. The Applicant failed to convince the Board that a dwelling could not be constructed in compliance with the Code. Perhaps a dwelling built to compliance with the Code is not what the Applicant wants but the Property appears to have a large enough building envelope for the Applicant to construct a reasonably sized dwelling in compliance with the Sussex County Zoning Code. For these reasons, the Board finds that the Property could be developed in strict conformity with the Code and that the variances are not necessary to enable reasonable use of the Property.
- c. The Board finds that the Applicant created his own exceptional practical difficulty by constructing a dwelling which does not fit within the building envelope. The Applicant's decision to construct the dwelling in this location is the reason for the need for a variance and has nothing to do with the size, shape, or condition of the Property. While the Applicant contends that he was misled by the error in the front yard setback requirement shown on the building permit, he did not even meet those lesser setback requirements. The front yard setback requirement for this parcel is 40 feet but the building permit incorrectly showed a front yard setback requirement of 30 feet. Even with the lesser front yard setback requirement shown on the building permit, the Applicant still far exceeded the lesser setback requirement. In fact, the Applicant did not even construct the home in compliance with the construction plan submitted as part of his building permit application. On the construction plan, the dwelling and porch were to be located 32 feet from the front property line. The survey, however, shows that the dwelling and porch are located 21.2 feet from the front property line. It is clear to the Board that the exceptional practical difficulty in this case was created by the Applicant. Even without taking into consideration the lesser front yard setback requirement erroneously listed on the building permit, the building envelope with the 40 foot front yard setback requirement appears to otherwise be able to fit a dwelling without the need for the variance. The Board was not convinced that the variance request was the product of a *need*. Instead, the variance request appears to be the product of a *want* as the Applicant seeks to retain the dwelling for purposes of convenience,

profit, and / or caprice. Since the Applicant can build a dwelling that can comply the Sussex County Zoning Code, the need for the variance is something created by the Applicant's wants rather than an unusual physical condition relating to the Property. The Applicant has thus created his own exceptional practical difficulty.

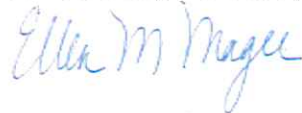
- d. Since the variances are not necessary to enable the reasonable use of the Property, the Board also finds that the variances requested are not the minimum variances necessary to afford relief. Furthermore, the Board finds there is space to build a reasonably sized dwelling and related structures on the Property in compliance with the Sussex County Zoning Code.

The Board denied the variance application finding that it failed to meet the standards for granting a variance.

Decision of the Board

Upon motion duly made and seconded, the variance application was denied. The Board Members in favor of the Motion to deny were Dr. Kevin Carson, Mr. Jeffrey Chorman, Ms. Ellen Magee, and Mr. John Williamson. No Board Member voted against the Motion to deny the variance application. Mr. Brent Workman did not participate in the discussion or vote on this application.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY



Ellen M. Magee
Chair

If the use is not established within two (2) years from the date below the application becomes void.

Date November 19, 2019