

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: J. MICHAEL YODER, JAMES O'BRYAN, and KEITH MARTIN

(Case No. 12374)

A hearing was held after due notice on November 4, 2019. The Board members present were: Dr. Kevin Carson, Mr. Jeff Chorman, Ms. Ellen Magee, Mr. John Williamson, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for variances from the road frontage requirement for proposed lots.

Findings of Fact

The Board found that the Applicants are requesting a variance of 77.12 feet from the 150 foot road frontage requirement for a proposed Lot 5 along Staytonville Road and a variance of 50 feet from the 150 foot road frontage requirement for a proposed Lot 4 along Webb Farm Road. This application pertains to certain real property located on the southwest corner of Staytonville Road and Webb Farm Road (911 Address: N/A); said property being identified as Sussex County Tax Map Parcel Number 1-30-11.00-6.00. 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 August 28, 2019, 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 seven (7) letters in support of and no correspondence in opposition to the Application.
3. The Board found that J. Michael Yoder was sworn in to give testimony about the Application. Mr. David Hutt, Esquire, presented the Application on behalf of the Applicants and submitted an exhibit booklet to Board members.
4. The Board found that Mr. Hutt stated that the Property is located in the greater, rural Greenwood area and fronts on both Webb Farm Road and Staytonville Road. The Property consists of approximately 17 acres and was recently acquired by the Applicants.
5. The Board found that Mr. Hutt stated that the Property was originally subdivided by a previous owner with the intent of making 23 lots with an internal road that would have access to both Webb Farm Road and Staytonville Road.
6. The Board found that Mr. Hutt stated that the original subdivision created the unique shape of the lot and was not created by the Applicants.
7. The Board found that Mr. Hutt stated that the Applicants propose to create 5 lots and that the acreage could accommodate the 5 lots but the Applicants are constrained by the shape of the lot.
8. The Board found that Mr. Hutt stated that the Applicants have met with neighbors to discuss the plan and they support the request.
9. The Board found that Mr. Hutt stated that the Property is unique due to the odd shape and that, due to the uniqueness, the Property cannot otherwise be developed.
10. The Board found that Mr. Hutt stated that the exceptional practical difficulty was not created by the current owners as they purchased the lot as is.
11. The Board found that Mr. Hutt stated that the entrances have developed lots on either side and therefore cannot be increased.

12. The Board found that Mr. Hutt stated that the variances will not alter the essential character of the neighborhood and that the use will be identical to the uses of neighboring properties.
13. The Board found that Mr. Hutt stated that the entrances will provide private access for two large proposed lots.
14. The Board found that Mr. Hutt stated that each of the proposed lots are greater than the minimum size of $\frac{3}{4}$ acre required by Sussex County.
15. The Board found that Mr. Hutt stated that the variances requested are the minimum variances possible because of the developed lots on either side of the entrances.
16. The Board found that Mr. Yoder affirmed the statements made by Mr. Hutt as true and correct.
17. The Board found that seventeen (17) parties appeared in support of and no parties appeared in opposition to the Application.
18. 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 unrebutted, 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 its size and shape. While the Property is large and easily has enough acreage to be subdivided into 5 lots, the Property has a unique shape where it fronts on multiple roads at different points. In two instances, the road frontages are less than 150 feet. Although these road frontages will not change if the Property is subdivided as proposed, the Applicants are unable to subdivide the Property using those road frontages for individual lots while meeting the requirements of the Sussex County Zoning Code. These conditions have created an unnecessary hardship and exceptional practical difficulty for the Applicants who seek to reasonably subdivide the Property.
 - b. The unnecessary hardship and exceptional practical difficulty are not being created by the provisions of the Sussex County Zoning Code.
 - c. Due to the uniqueness of the situation, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Applicants seek to reasonably subdivide the Property into 5 lots but are unable to do while comply with the Sussex County Zoning Code. The Board is thus convinced that the variances are necessary to enable the reasonable use of the Property as the variances will allow the Applicants to reasonably subdivide the Property. The Board is convinced that the size, shape, and location of the proposed lots are reasonable.
 - d. The unnecessary hardship and exceptional practical difficulty were not created by the Applicants. As discussed above, the Property has unique conditions which have limited the Applicants' ability to reasonably subdivide the Property. The Applicants did not create the unique shape of the lot and the Board was convinced that the Applicants have not created the exceptional practical difficulty and unnecessary hardship. Furthermore, the Board is convinced that the Applicants did not come to the Property with an illegal use in mind. Rather, the Applicants are limited by the physical conditions of the Property and need the variances in order to reasonably subdivide the Property as proposed.
 - e. 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 proposed subdivision will have no effect on the character of the neighborhood. The proposed lots will be large lots similar in size and character to other lots in the neighborhood. The Board heard no evidence

that the variances would somehow alter the essential character of the neighborhood or be detrimental to the public welfare. Rather, many neighbors and supporters appeared or submitted letters supporting this request.

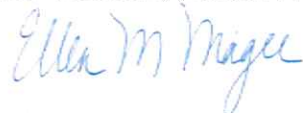
- f. The variances sought are the minimum variances necessary to afford relief and the variances requested represent the least modifications possible of the regulations at issue. The Applicants have demonstrated that the variances sought will allow the Applicants to reasonably subdivide the Property. The Board notes that the road frontages which require these variances are not changing from their current state.
- g. The condition or situation of the Property and the intended use of the Property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the Sussex County Zoning Code.
- h. The Board notes that the Applicants will still have to present this application before the Planning & Zoning Commission for a major subdivision approval.

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 Dr. Kevin Carson, Mr. Jeffrey Chorman, Mr. John Williamson, and Mr. Brent Workman. No Board Member voted against the Motion to approve the variance application. Ms. Ellen Magee 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 January 7, 2020.