

**BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY**

**IN RE: STEVEN H. HEARN & MICHELLE L. HEARN**

**(Case No. 12377)**

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 a variance from the minimum lot size requirement for a proposed lot.

Findings of Fact

The Board found that the Applicants are seeking a variance of 0.218 acres from 0.75 acre lot size requirement for a proposed lot. This certain real property is located on the east side of Bethel Concord Road approximately 0.19 Miles north of Airport Road (911 Address: 26183 Bethel Concord Road, Seaford); said property being identified as Sussex County Tax Map Parcel Number 1-32-2.00-339.00 (Portion). After a public hearing, the Board made the following findings of fact:

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 11, 2019, a survey dated April 6, 2011.
2. The Board found that the Office of Planning & Zoning received no correspondence in support of or in opposition to the Application.
3. The Applicants propose to subdivide a lot identified as "Parcel A" on a survey dated September 11, 2019, from a larger parcel. The variance is needed for the proposed "Parcel A".
4. The Board found that Steven Hearn and Michelle Hearn were sworn in to testify about the Application.
5. The Board found that Mr. Hearn testified that he intends to subdivide parcel from a larger parcel but he wants to keep the proposed lot in line with the other lots on Bethel Concord Road. Neighboring lots are also less than  $\frac{3}{4}$  acre.
6. The Board found that Mr. Hearn testified that that the residual lands will be used for farming and that, if the lot was to be the full size of 0.75 acres, it would impede the farm operations to the rear.
7. The Board found that Mr. Hearn testified that the lot will be served by a well in the front yard and septic in the rear yard.
8. The Board found that Mr. Hearn testified that the original subdivision was not created by the Applicants.
9. The Board found that Mr. Hearn testified that the farm is irrigated and the irrigation extends close to the proposed lot line. The Applicant currently farms up to the proposed lot line.
10. The Board found that Ms. Hearn testified that the Property is unique due to its shape and size and that it cannot otherwise be developed as it would extend 60 feet into the farm operation to the rear.
11. The Board found that Ms. Hearn testified that the manufactured home has been on the lot for many years and was placed by a prior owner.
12. The Board found that Ms. Hearn testified that the variance would not alter the essential character of the neighborhood as the proposed lot would be a similar size and shape as the surrounding lots.

13. The Board found that Ms. Hearn testified that the variance requested is the minimum variance request to keep the lot lines uniform and not impede the farm operations in the rear.
14. The Board found that one person appeared in support of and no parties appeared 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 its size, shape, and historical use. While the Property is large and easily has enough acreage to be subdivided into 2 lots, the Property was previously subdivided by a prior owner with lots fronting on Bethel Concord Road. Those lots are smaller than  $\frac{3}{4}$  acre and have a depth similar to the proposed Parcel A. The portion of the Property behind those lots is used for farming and will continue to be used for farming. The proposed Parcel A has also been used historically for a manufactured home, which the Applicants intend to replace. The farming operations extend to the proposed lot line of Parcel A and the proposed subdivision essentially creates a lot line where a change in use had historically been recognized. The farm also uses irrigation systems which would likely irrigate portions of the subdivided lot if it were to meet the lot size requirements. 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 2 lots (Parcel A and residual lands) but are unable to do while comply with the Sussex County Zoning Code. The Board is thus convinced that the variance is necessary to enable the reasonable use of the Property as the variance 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 or subdivide neighboring lands into smaller lots. 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 variance in order to reasonably subdivide the Property as proposed.
  - e. 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 Board is convinced that proposed subdivision will have no effect on the character of the neighborhood. The proposed Parcel A will effectively create a lot which has already been in practical existence for some time. Parcel A has been used for a manufactured home whereas the residual lands are used for farming operations. There will be no apparent change in the use of these



lots after the subdivision takes place. Furthermore, Parcel A will have a rear line that will match neighboring lands and Parcel A will be similar in size and character to other lots in the neighborhood. The Board heard no evidence that the variance would somehow alter the essential character of the neighborhood or be detrimental to the public welfare.

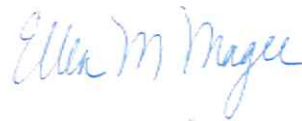
- f. The variance sought is the minimum variance necessary to afford relief and the variance requested represent the least modification possible of the regulation at issue. The Applicants have demonstrated that the variance sought will allow the Applicants to reasonably subdivide the Property while keeping with the historical uses of the parcels.
- 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.

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, Ms. Ellen Magee, Mr. John Williamson, and Mr. Brent Workman. No Board Members voted against the Motion to approve the variance 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