

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: ISABELLA, LLC

(Case No. 12384)

A hearing was held after due notice on November 18, 2019. The Board members present were: Dr. Kevin Carson, Ms. Ellen Magee, Mr. John Williamson, and Mr. Brent Workman.

Nature of the Proceedings

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

Findings of Fact

The Board found that the Applicant is requesting a variances of 55.42 feet and 53.2 feet from the 60 feet front yard setback requirement for an existing building on land identified as proposed Lot 3 on a subdivision plan dated September 16, 2019. This application pertains to certain real property located on the east side of Old Stage Road approximately 280 feet north of Line Road (911 Address: 36858 Red Berry Road, Delmar); said property being identified as Sussex County Tax Map Parcel Number 5-32-20.00-107.00. After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a letter from the Applicant's counsel with a copy of a subdivision plans from November 25, 2009, an aerial photograph of the Property, a lot consolidation plan dated April 26, 2019, a proposed subdivision plan, 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 Vasilios Diakos was sworn in to give testimony about the Application. Michael Smith, Esq., presented the Application on behalf of the Applicant. Mr. Smith submitted an exhibit booklet to the Board.
4. The Board found that Mr. Smith stated that the property is located in a commercially zoned area with the rear of the property zoned AR-1.
5. The Board found that Mr. Smith stated that the property was divided into two parcels by a prior owner on November 25, 2009. A warehouse structure was located on one parcel at that time and is located in the C-1 zoned portion of the lot.
6. The Board found that Mr. Smith stated that the current owner later consolidated the properties back into one parcel in April 2019. Subdivision plans were in Mr. Smith's packet for the original division and consolidation of the property.
7. The Board found that Mr. Smith presented evidence that the owner desires to subdivide the properties again into two separate parcels so it can be used for its highest in best use. The structure will be located on Lot 2 which will consist of approximately 1.73 acres. Lot 3 will consist of residual lands totaling approximately 17.24 acres.
8. The Board found that Mr. Smith stated that, after the property is subdivided, the structure will be located in the 60 foot front yard setback. The variances are needed for that structure.
9. The Board found that Mr. Smith stated that the deep yet narrow nature of the property and its development by a prior owner make it unique.

10. The Board found that Mr. Smith stated that the location of the structure (which existed on the property prior to the Applicant purchasing the property) and the inability to move it create an exceptional practical difficulty.
11. The Board found that Mr. Smith stated that the Application will not affect the essential character of the neighborhood. He argued that the property will continue to be used commercially (the current use in the area), the structure is pre-existing to Applicant's purchase, there will be no change of use, the property borders an Animal Hospital to the south, and the property is located close to Sussex Highway (Rt. 13) where there is significant commercial development and growth.
12. The Board found that Mr. Smith stated that the variance will be the minimum amount necessary to allow for the continued use of the structure on the property.
13. The Board found that Mr. Diakos affirmed the statements made by Mr. Smith as true and correct.
14. The Board found that William Randolph Ellis, Megan Prettyman, and Ryan Prettyman, who are neighbors, were sworn in to testify against the Application.
15. The Board found that Mr. Ellis testified against the Application because it will add to the traffic congestion in the area.
16. The Board found that Mr. Prettyman testified that there is high traffic in the area and the Application would add more traffic. In addition, Mr. Prettyman testified that the easement which allows access to the property is not designed to handle this subdivision.
17. The Board found that no one appeared in support of and three 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 weighed and considered, 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 multiple lots, the Property is exceptionally deep as compared to its width. The Property is also split-zoned with a warehouse located on the C-1 portion of the parcel. The Property was previously subdivided by a prior owner and a prior owner constructed the warehouse. The Applicant proposes to alter the lot lines while retaining the warehouse in its existing location. Due to the existing location of the warehouse and the Property's unique size and shape, the Property cannot be subdivided with a variance while maintaining the warehouse in its existing location. These conditions, which pre-existed the Applicant's acquisition of the Property, have created an unnecessary hardship and exceptional practical difficulty for the Applicant 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 Property and the situation, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Applicant seeks to reasonably subdivide the Property but is unable to do so while complying 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 variance will allow the Applicant to reasonably subdivide the Property while retaining an existing warehouse. The Board is convinced that the size, shape, and location of the warehouse are reasonable.
 - d. The unnecessary hardship and exceptional practical difficulty were not created by the Applicant. As discussed above, the Property has unique

conditions which have limited the Applicant's ability to reasonably subdivide the Property. The Applicant did not create the unique shape of the lot or construct the warehouse. The Board was convinced that the Applicant has not created the exceptional practical difficulty and unnecessary hardship. Furthermore, the Board is convinced that the Applicant did not come to the Property with an illegal use in mind. Rather, the Applicant is limited by the physical conditions of the Property and the prior development thereof and the Applicant needs the variances in order to reasonably subdivide the Property as proposed and to retain the existing warehouse.

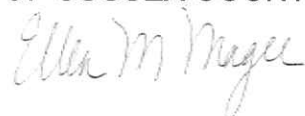
- e. The variances will not alter the essential character of the neighborhood nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare. The Board is convinced that the variances will have no effect on the character of the neighborhood. The variances will allow the existing warehouse to remain in its current location. There were no complaints about the location of the warehouse. Rather, neighbors complained about the effect the commercial use of the Property would have on the neighborhood. This parcel, however, is already partially zoned commercial and can be used for said uses. The Board was not convinced that the variances would somehow alter the essential character of the neighborhood or be detrimental to the public welfare.
- f. 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 Applicant to retain the existing warehouse on the Property. No additions or modifications to the warehouse are proposed.
- 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 Mr. Brent Workman, Mr. John Williamson, and Dr. Kevin Carson. Ms. Ellen Magee voted against the motion to approve Application. Mr. Jeffrey Chorman 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 28, 2020