

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

**IN RE: GERALD WORKMAN (PEGGY BOWDEN WHITE)**

**(Case No. 12385)**

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 a variance from the road frontage requirement for a proposed lot.

Findings of Fact

The Board found that the Applicants are requesting a variance of 99.81 feet from the 150 feet road frontage requirement for a proposed lot. This application pertains to certain real property on the east side of Brittingham Road approximately 543 feet south of Pepperbox Road (911 Address: N/A); said property being identified as Sussex County Tax Map Parcel Number 5-32-15.00-45.00. After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a construction entrance permit, a subdivision plan dated September 5, 2019, an aerial photograph of the Property, and a portion of the tax map of the area.
2. The Applicant proposes to subdivide a parcel by creating two lots along Brittingham Road and leaving residual lands consisting of 21.0 acres, more or less. The residual lands parcel, as identified on the subdivision plan, measures 50.19 feet wide at Brittingham Road. This variance pertains to the residual lands parcel.
3. The Board found that the Office of Planning & Zoning received no correspondence in support of or in opposition to the Application.
4. The Board found that Shelly Workman, Peggy Bowden White, and Randy White were sworn in to give testimony about the Application. Ms. Workman submitted a letter of support to the Board.
5. The Board found that Ms. Workman testified that they are selling two lots from the subject parcel and are requesting a variance to provide an entrance to the remaining farmland from Brittingham Road. The entrance along Brittingham Road for the residual lands will be less than 150 feet wide and the parcels being created meet the lot width requirement.
6. The Board found that Ms. Workman testified that the Property is unique and currently has irrigation placed and the irrigation would be cost prohibitive to relocate.
7. The Board found that Ms. Workman testified that there is no other available entrance to the farmland and the entrance will still allow enough room for farm equipment to reach the residual lands.
8. The Board found that Ms. Workman testified that the land has been farmed for more than 60 years.
9. The Board found that Ms. Workman testified that the variance will not alter the essential character of the neighborhood at the two new lots will be similar in size and shape to the existing residential lots.
10. The Board found that Ms. Workman testified that the entrance has been approved by DeIDOT.
11. The Board found that Ms. White testified that the residual lands will consist of 21 acres.

12. The Board found that Ms. White testified that the access strip will provide enough room for utilities and access.
13. The Board found that Ms. White testified that the lots are not deeper because they would run into the irrigation pivots.
14. The Board found that Kathryn Pusey and Frank Pusey were sworn in to give testimony in opposition to the Application. Neither opposed the creation of the 2 lots but they expressed concerns about the location of the agricultural lane.
15. The Board found that Ms. Pusey testified that she owns an adjacent lot created in 2008.
16. The Board found that Ms. Pusey testified that she is opposed to the variance request and has concerns that agricultural lane could be moved from the proposed location and be placed next to her property.
17. The Board found that no one appeared in support of and two 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 and shape. While the Property is large and easily has enough acreage to be subdivided into 3 lots, the Property was previously subdivided with lots fronting on Brittingham Road and the road frontage is limited. Accordingly, the Applicant is unable to create these 3 lots while meeting the road frontage requirements. Notably, previously subdivided lots are similar in size and shape to the proposed Parcels A and B. The portion of the Property behind those lots is used for farming and will continue to be used for farming. 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 3 lots (Parcel A, Parcel B, 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 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 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 lots will be lots similar in size and character to other lots in the neighborhood. Parcels A and B will have rear lines that will match neighboring lands as well. The Board was not convinced by arguments from neighbors that the variance would somehow alter the essential character of the neighborhood or be detrimental to the public welfare. The neighbors did not oppose the creation of these lots. Rather, they opposed the agricultural access but that access would exist even if the subdivision did not occur.

- f. The variance sought is the minimum variance necessary to afford relief and the variance requested represents 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, Ms. Ellen Magee, Mr. John Williamson, and Mr. Brent Workman. No Board Member voted against the Motion to approve the variance 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.