

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: EJJ REAL ESTATE, LLC

(Case No. 12403)

A hearing was held after due notice on January 27, 2020. The Board members present were: Dr. Kevin Carson, Mr. Jeff Chorman, Mr. John Williamson, and Mr. Brent Workman.

Nature of the Proceedings

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

Findings of Fact

The Board found that the Applicant is requesting a variance of 26.2 feet from the 150 feet lot width requirement for a proposed lot and a variance of 100 feet from the 150 feet lot width for proposed residual lands. The proposed lots which are subject to this Application are found on a minor subdivision plan dated October 18, 2019. This application pertains to certain real property located on the west side of Cedar Neck Road approximately 475 feet north of Hickman Road (911 Address: 30370 Cedar Neck Road, Ocean View); said property being identified as Sussex County Tax Map Parcel Number 1-34-9.00-70.00. After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a subdivision plan dated October 18, 2019, a deed to the Property, Sussex County Ordinance No. 2533, photographs, 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 Cedar Neck Road. One lot will measure 0.34 acres and the other lot, which is identified on the survey as "residual lands" will consist of 3.08 acres. The proposed lot will have road frontage of 123.80 feet and the residual lands parcel will have road frontage of 50 feet. This variance request pertains to both parcels.
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 Ms. Shirley Price and Mr. Eric Fiori were sworn in to give testimony about the Application. Ms. Shannon Carmean Burton, Esquire, presented the Application on behalf of the Applicant. Mr. Fiori is a member of EJJ Real Estate, LLC, which is the contract purchaser for the residual lands and Ms. Price is the trustee of the owner of the Property.
5. The Board found that Mrs. Burton stated that the Property is located in the CR-1 district after being rezoned from GR and is currently improved with an existing structure and shed. The previous owner resided on the Property and used the remainder of the Property for boat and other storage purposes pursuant to Conditional Use #478.
6. The Board found that Mrs. Burton stated that EJJ Real Estate, LLC, operates a boat sales and repair business on property directly across the street from the subject property.
7. The Board found that Mrs. Burton stated that the trustees listed the entire property for sale originally in June 2018 and found it difficult or impossible to sell the Property as a whole.
8. The Board found that Mrs. Burton stated that EJJ Real Estate, LLC, would like to purchase a portion of this property identified as the residual lands on the survey and,

after purchase, would continue to use the residual lands for storage purpose. The contract for purchase of the residual lands is contingent on the Board's approval of the variances to allow for the Property to be subdivided as proposed.

9. The Board found that Mrs. Burton stated that EJF Real Estate, LLC, has no intent to add a structure to the residual land at this time.
10. The Board found that Mrs. Burton stated that the Property is unique as it is a large, irregularly shaped lot.
11. The Board found that Mrs. Burton stated that the Property consists of 3.42 acres of land even though the minimum lot size in a CR-1 district is 10,000 sq. ft.
12. The Board found that Mrs. Burton stated that there are currently separate entrances for the Ellen Rice Studio and the storage area and, as such, the Property functionally appears to be two lots.
13. The Board found that Mrs. Burton stated that, although this property is large, it only has road frontage of 173.8 feet rather than the minimum of 300 feet required if subdivided into two lots.
14. The Board found that Mrs. Burton stated that the uniqueness of the Property has created the exceptional practical difficulty.
15. The Board found that Mrs. Burton stated that there is no possibility that this property can be developed in the strict conformity of the provisions of the zoning code and that the variances are needed to enable the reasonable use of the Property.
16. The Board found that Mrs. Burton stated that the current owners of the property inherited the Property with the existing structures and therefore, did not create the exceptional practical difficulty.
17. The Board found that Mrs. Burton stated that the proposed use is the best use of the Property.
18. The Board found that Mrs. Burton stated that the variances, if authorized, will not alter the essential character of the neighborhood or district in which the Property is located or be detrimental to the public welfare.
19. The Board found that Mrs. Burton stated that the Property has been used for multiple commercial uses but the Applicant seeks to continue the storage use and has no plans to improve the Property with any structures at this time.
20. The Board found that Mrs. Burton stated that the Applicant is unaware of any complaints as to the use and location.
21. The Board found that Mrs. Burton stated that the variances, if authorized, represent the minimum variances that will afford relief and represent the least modifications possible and will simply allow the subdivision of the property into two lots and enable the trustees to sell a portion of the Property to the Applicant.
22. The Board found that Ms. Price confirmed that the statements made by Mrs. Burton were true and correct.
23. The Board found that Ms. Price testified that the property has been on the market since June 2018 but no one expressed interest in the total package.
24. The Board found that Ms. Price testified that there are a lot of subdivisions in the area that do not allow boats or travel trailers parked on their property and that this is an opportunity to fill that need.
25. The Board found that Mr. Fiori testified that he owns the property across the street which he purchased approximately two years ago and he operates a boat repair and sales facility there.
26. The Board found that Mr. Fiori testified that this property is convenient for his business.
27. The Board found that Mr. Fiori testified that there will be no change in the use of the Property.
28. The Board found that Mr. Fiori testified that he is in the process of constructing a boat showroom on his property and that he wants to continue the current use of the subject property to store boats and RVs.

29. The Board found that Ms. Price testified that the use started in the 1970s to complement a nearby bait and tackle shop.
30. The Board found that Ms. Price testified that the house is connected to central sewer and, if the residual lands are developed, they would be connected to the sewer as well.
31. The Board found that Mr. Paul Reiger was sworn in to give testimony in support of the Application.
32. The Board found that two parties appeared in support of and no parties appeared in opposition to the Application.
33. 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 and shape. While the Property is large and easily has enough acreage to be subdivided into 2 lots, the Property is narrow and the road frontage is limited. Accordingly, the Applicant is unable to create these 2 lots while meeting the road frontage requirements. Notably, proposed subdivided lots will effectively subdivide the Property into 2 lots in a manner which is similar to the historical use of the Property. The site has been used for many years as a residence and boat storage facility. The area where the residence is located will remain as a separate lot and the boat storage facility will remain on the separate lot. Both parcels also have had separate road entrances for many years. The portion of the Property used for boat storage will continue to be used for that purpose. These conditions have created an unnecessary hardship and exceptional practical difficulty for the Applicant who seeks 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 Applicant seeks to reasonably subdivide the Property into 2 lots but is 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 Applicant 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 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 and 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 needs the variances in order to reasonably subdivide the Property as proposed. The Board also notes that this proposed subdivision will be consistent with the historical use of the Property.
 - 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 subdivision will effectively delineate a

property line where separate uses have long taken place. The residual lands have historically been used for boat storage and the proposed lot has been used as a residence. It is doubtful that the subdivision will be noticeable to neighbors since the use of the lots will remain the same and no new entrances will be created. Rather, the lots already have separate entrances. The Board also notes that the residual lands to be used for boat storage will be located across the street from a boat sales facility and the storage facility will complement that use. There was no evidence that the variances 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.

- 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 Applicant has demonstrated that the variances sought will allow the Applicant 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, 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 March 17, 2020.