

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: IRIS MOORE, DANNY L. MOORE, JR., & DARREN E. MOORE

(Case No. 12477)

A hearing was held after due notice on September 21, 2020. 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 width requirement for a proposed lot.

Findings of Fact

The Board found that the Applicants are requesting a variance of 100 feet from the 150 foot lot width requirement for the creation of a lot with a 50 foot wide entrance. This application pertains to the lot identified as Parcel B-2 on the survey dated May 22, 2020. This application pertains to certain real property located on the northwest side of Shingle Point Road approximately 150 ft. northeast of Waldwick Way (911 Address: N/A); said property being identified as Sussex County Tax Map Parcel Number 1-35-11.00-2.03. 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 letter of no objection from DeIDOT, and a survey dated May 22, 2020.
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 Danny Moore was sworn in to testify about the Application. Tim Willard, Esquire, presented on behalf of the Applicants.
4. The Board found that Mr. Willard stated that the Property consists of 17 acres but only has 226.48 feet of road frontage.
5. The Board found that Mr. Willard stated that the father of Danny Moore and Darren Moore died in 2014 leaving the Property to them with his wife having a life estate.
6. The Board found that Mr. Willard stated that the Applicants wish to subdivide the Property into two lots where they will eventually build a dwelling on each parcel.
7. The Board found that Mr. Willard stated that the subdivision is consistent with the Applicants' father's wishes.
8. The Board found that Mr. Willard stated that the Property is unique as it is a seventeen-acre parcel with only 226 feet of road frontage.
9. The Board found that Mr. Willard stated that the lot is also oddly shaped.
10. The Board found that Mr. Willard stated that the exceptional practical difficulty was not created by the Code but there is no other way to subdivide the Property.
11. The Board found that Mr. Willard stated that two dwellings are not permitted on one lot so the subdivision is necessary for the reasonable use of the Property.
12. The Board found that Mr. Willard stated that the exceptional practical difficulty was not created by the Applicants.
13. The Board found that Mr. Willard stated that granting the variance will not alter the essential character of the neighborhood.
14. The Board found that Mr. Willard stated that the area is a residential area with a larger development in the area coming in the future.
15. The Board found that Mr. Willard stated that only one variance is being sought and the two lots will have a shared entrance which has been approved by DeIDOT.
16. The Board found that Mr. Willard stated that the Applicants did not create the shape of the lot and did not create the estate planning of their father.

17. The Board found that Mr. Willard stated that the variance requested is the minimum variance to afford relief and allow for the creation of a flag lot.
18. The Board found that Mr. Moore affirmed the statements made by Mr. Willard as true and correct.
19. The Board found that no one appeared in support of or opposition to the Application.
20. 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 only has 226.48 feet of road frontage. Consequently, the Applicants are constrained in their ability to otherwise subdivide the lot. The Property also has a unique shape which greatly limits its ability to be subdivided. Accordingly, the Applicants are unable to create this proposed lot while meeting the road frontage 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 but are unable to do while complying 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 Parcel B-2 is reasonable. The Board notes that the resulting two lots will be large lots.
 - 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 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 subdivision will result in the creation of 2 large lots with a shared entrance onto Shingle Point Road. The lots are each over 8 acres and one lot will be located behind the other lot. There was 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 represents the least modification possible of the regulation at issue. The Applicant has demonstrated that the variance sought will allow the Applicant to reasonably subdivide the Property into two

large lots. The Applicant is subdividing the Property in a manner that will only require a variance for one lot.

- 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 November 16, 2020