

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: WATERS EDGE CHURCH

(Case No. 12679)

A hearing was held after due notice on April 18, 2022. The Board members present were: Mr. John Williamson, Dr. Kevin Carson, Mr. Jeff Chorman, and Mr. Jordan Warfel.

Nature of the Proceedings

This is an application for variances from the front yard setback requirements for proposed structures.

Findings of Fact

The Board found that the Applicant is requesting the following variances: variances of 33.52 feet, 36.52 feet, 26.41 feet, and 35.51 feet from the sixty (60) foot front yard setback requirement along Route 16, Broadkill Road for a proposed church. This application pertains to certain real property located on the east side of Reynolds Road and the southwest side of Broadkill Road at the intersection of Reynolds Road and Broadkill Road (911 address: 13275 Reynolds Road, Milton) said property being identified as Sussex County Tax Map Parcel Number 235-15.00-7.01. The property is zoned CR-1. After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, copies of the deed to the property, a portion of the tax map of the area, surveys of the Property prepared by Pennoni Associates, Inc. showing existing and proposed conditions, aerial photographs of the site, Google Earth photographs of adjacent street views, and a floorplan for the proposed buildings.
2. The Board found that the Office of Planning and Zoning received no letters in support of the Application and no correspondence in opposition to the Application.
3. The Board found that Tim Willard, Esq., presented the Application.
4. The Board found that Mr. Willard stated that Water's Edge is a Wesleyan congregation, derived from the Methodist Church.
5. The Board found that Mr. Willard stated that the Church has sold their former location which is now a food pantry.
6. The Board found that Mr. Willard stated that the proposed location was formerly a feed store.
7. The Board found that Mr. Willard stated that the property is unique due to the existing encroachment of the present structures.
8. The Board found that Mr. Willard stated that they are proposing to demolish the current buildings and move the proposed structures back making it more in compliance.
9. The Board found that Mr. Willard stated that the lot is an oddly shaped corner lot and that the majority of the rear is dedicated to the existing septic system.
10. The Board found that Mr. Willard stated that the variances are intended to bring the property more into compliance with code and facilitate the necessary functions of the Water's Edge Church and that the congregation is ever growing.
11. The Board found that Mr. Willard stated that the entire front building and pitched roof would be removed and the kitchen, which is a separate building will be removed.

12. The Board found that Mr. Willard stated that DELDOT will allow one entrance to remain, one will be removed, and another will be added; and that DELDOT is instituting a Right-of-Way dedication along the frontage of the Property.

13. The Board found that Mr. Willard stated that they are working on an architecturally pleasing structure, which would not adversely affect the neighboring properties.

14. The Board found that Mr. Willard stated that they are intending to improve what is existing in a minimal way on a nonconforming property.

15. The Board found that Mr. Tim Wilson was sworn into testify about the Application and he confirmed that the statements of Mr. Willard are true and correct.

16. The Board found that Mr. Wilson testified that the Church has outgrown its former location within the Town of Milton and purchased this property as their "Promised Land" for expansion.

17. The Board found that Mr. Wilson testified that this variances are the minimum necessary to serve the congregation.

18. The Board found that Mr. Allen Dektor was sworn in to give testimony about the Application.

19. The Board found that Mr. Dektor testified that the area to the right of the existing and proposed structures contains the septic field, and that the septic system is sufficient for the proposed structures.

20. The Board found that no one appeared in opposition to the Application and one person appeared in support of it.

21. 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 unrebutted, 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 exceptionally small buildable area. The property has structures that have existed for decades, plus a large parking and septic area. It is also encumbered by a sixty (60) foot setback along Route 16 which is currently encroached upon by the structures that will be removed. These conditions have created an unnecessary hardship and exceptional practical difficulty for the Applicant which seeks to replace existing structures with one that is more in conformity with the setback requirements.

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 lot, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property has unique physical characteristics, and the buildable area thereof is limited due to those characteristics. The Applicant seeks to replace nonconforming structures on the lot but is unable to do so without violating the Sussex County Zoning Code. The Board is convinced that the variances are necessary to enable the reasonable use of the Property as the variances will allow the current buildings to be removed and new buildings constructed with less of an encroachment into the front yard of the lot. The Board is convinced that the shape and location of the structure is also reasonable, which is confirmed when reviewing the surveys provided by the Applicant.

d. The unnecessary hardship and exceptional practical difficulty were not created by the Applicant. As previously stated, the Property has unique conditions and existing, encroaching structures and these conditions have resulted in a limited building envelope on the Property. These conditions have created the unnecessary hardship and exceptional practical difficulty.

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 will it be detrimental to the public welfare. The Board is convinced that the replacement structure will have no effect on the character of the neighborhood since it will reduce the current encroachments that exist on the Property. This will also improve the ingress and egress of the Property. No evidence was presented which demonstrates that the variances would somehow alter the essential character of the neighborhood.

f. The variances sought are the minimum variances necessary to afford relief and the variances requested represents the least modifications possible of the regulations at issue. The Applicant has demonstrated that the variance sought will allow the Applicant to build a reasonably sized and appropriately located structure on the Property and, at the same time, reduce the non-conforming encroachments that currently exist on the Property.

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 of the motion to approve were Mr. John Williamson, Dr. Kevin Carson, Mr. Jeffrey Chorman, and Mr. Jordan Warfel. No Board Member voted against the Motion to approve the variance application. Mr. Travis Hastings did not participate in the discussion or vote on this application.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY



John Williamson
Chair

If the use is not established within two (2) years from the date below the application becomes void.

Date June 27, 2022