

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: JUDITH BELK

(Case No. 12726)

A hearing was held after due notice on August 1, 2022. The Board members present were: Mr. Jeffrey Chorman, Mr. Jordan Warfel, and Mr. John Williamson.

Nature of the Proceedings

This is an application for variances from the lot width and depth requirements, minimum lot size requirement, side yard setback requirement, rear yard setback requirement, and front yard setback requirement for proposed lots and structures.

Findings of Fact

The Board found that the Applicant is requesting the following variances:

1. A variance of 15,242 square feet from the 20,000 square feet minimum lot size requirement for a parcel for proposed Lot No. 1;
2. A variance of 15,242 square feet from the 20,000 square feet minimum lot size requirement for a parcel for proposed Residual Lands;
3. A variance of 52.65 feet from the 100 foot lot width requirement for a parcel for proposed Residual Lands;
4. A variance of 52.35 feet from the 100 foot lot width requirement for a parcel for proposed Lot No. 1;
5. A variance of 1 foot from the five (5) feet side yard setback requirement on both sides for proposed Lot No. 1;
6. A variance of 1 foot from the five (5) feet side yard setback requirement on both sides for proposed Residual Lands;
7. A variance of 5 feet from the fifteen (15) feet rear yard setback requirement proposed Lot No. 1;
8. A variance of 5 feet from the fifteen (15) feet rear yard setback requirement proposed Residual Lands;
9. A variance of 10 feet from the thirty (30) feet front yard setback requirement for proposed Lot No. 1; and
10. A variance of 10 feet from the thirty (30) feet front yard setback requirement for proposed Residual Lands.

This application pertains to certain real property located on the northwest side of Seagrass Court within the Seagrass Plantation subdivision (911 Address: 29742 Seagrass Court, Dagsboro); said property being identified as Sussex County Tax Map Parcel Number 134-7.00-106.00 ("the Property"). 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 partitioning survey dated September 17, 2021, a deed to the Property, and a survey of the Property dated September 18, 2009.
2. The Applicant proposes to subdivide the Property into two lots identified as "Lot No. 1" and "Residual Lands" on the Partitioning Survey dated September 17, 2021. The lot width and lot size variances are needed in order for the Applicant to subdivide the lots as proposed and the front yard, side yard, and rear yard variances are requested to allow future development of the lots.
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 Judith Belk was sworn in to testify about the Application. Tim Willard, Esquire, presented the case on behalf of the Applicant. Mr. Willard submitted copies of findings of facts from other cases.
5. The Board found that Mr. Willard stated that the Property is a unique property but it is not a part of the Seagrass subdivision. He noted that the subdivision was approved many years ago but these lots were already in existence at that time. According to Mr. Willard, in the 1920s and 1930s, these properties were used as fishing camps and the Property was formerly owned by Ms. Belk's grandparents and, over time, the Property has been passed down to family members.
6. The Board found that Mr. Willard stated that, in 2009, there was a house on the Property and Ms. Belk's then-attorney advised her that the dwelling violated the setback requirements. He believed this information was inaccurate since the dwelling was constructed in the 1930s and predated the enactment of the Sussex County Zoning Code. Nevertheless, the lot lines were then adjusted, after the lines were removed, Ms. Belk purchased the Property and removed the home due to its dilapidation. He noted that there has been no building on the Property since that time.
7. The Board found that Mr. Willard stated that, in 2018, there were two variances that were approved on this street for lots of similar size.
8. The Board found that Mr. Willard stated that Ms. Belk intends to subdivide the Property into two lots and cannot do so without a variance because the proposed lots do not meet the current requirement for the AR zoning district even though there are smaller lots adjacent to the Property. The Applicant proposes equal sized lots each consisting of 4,750 square feet.
9. The Board found that Mr. Willard stated that the Applicant also seeks variances from the setback requirements so that the setbacks would be 20 feet from the front yard, 10 feet from the rear yard, and 4 feet from the side yard. He noted that, in 2018, the property to the right of this one was granted a variance for a lot smaller than what they are proposing and that these setbacks would allow for a more reasonable dwelling to be placed on the lot. He noted that, in the previous application by the neighbor, the Board found that the exceptional practical difficulty was not created by the applicant, that the variances would not alter the essential character of the neighborhood, and that the variances were the minimum variances necessary. He noted that the neighboring properties received variances in February and in April of the same year. He believes that the Board has already determined that the Property would meet all five qualifications based on past approvals.
10. The Board found that Mr. Willard stated that it was proposed to reinstate the prior lot line but the Applicant would still have been seeking variances for the setbacks. Ms. Belk does not prefer to reinstate the old lot lines because she would rather make the two lots equal in size.
11. The Board found that Mr. Willard stated that Ms. Belk is not proposing to build on either lot at the moment but is seeking these variances are part of her estate planning and he believes the request for setback reduction is a prerequisite to the partition of the Property.
12. The Board found that Mr. Willard stated that, if the variances for the setbacks are not approved, it would make it more difficult to construct on the property in the future.
13. The Board found that Mr. Willard stated that they are trying to clean up an error from twenty (20) years ago.
14. The Board found that Mr. Willard stated that he does not believe that plans would need to be submitted for dwellings to be constructed on the Property as the Board has previously issued approvals for lots of similar if not smaller size with the reduced setbacks.
15. The Board found that Mr. Willard stated that the owner could come back to the Board in the future with plans to ask for setback reductions.

16. The Board found that Mr. Willard stated that the layout of the lot was altered in the past due to estate planning and the sale of the Property from one cousin to another.
17. The Board found that Mr. Willard stated that there was formerly a dirt road with a temporary easement that became permanent for the resident to access their properties through Seagrass Court. Mr. Willard stated, however, that, if the Board is inclined to not grant the variances, for the side yard, rear yard, and front yard setback reductions without a formal plan then he would withdraw those requests as they are not ripe due to the lack of a site plan. He also stated that this request to withdraw those requests would be to avoid a *res judicata* issue in the future.
18. The Board found that Ms. Belk testified that all the statements of Mr. Willard were true and correct.
19. The Board found that Ms. Belk testified that her family has owned the Property since the 1930s.
20. The Board found that Ms. Belk testified that the reason for the requests is because she has two (2) siblings, a brother and sister, that will be inheriting the properties from her upon her death and she is trying to prepare both of these properties for their use upon her demise. She wants there to be no question as to the equal and buildable lots being passed to them.
21. The Board found that Ms. Belk testified that the lot lines predate zoning.
22. The Board found that Ms. Belk testified that the dwelling was removed in 2009 and that she was told she had to remove it.
23. The Board found that Donald Moore was sworn in to give testimony in support of the Application.
24. The Board found that Mr. Moore testified that he owns a house down the street from Ms. Belk's property and his property has been in his family since 1951.
25. The Board found that Mr. Moore testified that the lots in this area are small.
26. The Board found that Mr. Moore testified that these lots were sold to Ms. Belk's whole family with the exception of a few lots.
27. The Board found that Mr. Moore testified that, at the time, this size of lot was all that was needed but as times have changed they are very small.
28. The Board found that Mr. Moore testified that the area is seeing a large increase in development.
29. The Board found that Mr. Moore testified that the Property is very unique bayfront property and it would be best to maximize the potential for each of these lots by granting the variance requests.
30. The Board found that Mr. Moore testified that he is in support of the Application and it does not affect him though he is in close proximity to the Property.
31. The Board found that one person appeared in support of and no one appeared in opposition to the Application.
32. 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 for the variances from the lot size and lot width requirements met the standards for granting a variance. The findings below further support the Board's decision to approve the variances from the lot size and lot width requirements.
 - a. The Property is unique due to its size and historical development. The Property is a small lot consisting of only 9,516 square feet and was developed by a house in the 1930s. Prior to the Applicant's acquisition of the Property, a discrepancy on the location of the house was discovered and the Property, which previously consisted of two lots, was consolidated into one lot to remove that discrepancy. The house was later removed from the site. The Applicant now seeks to resubdivide the Property into two equal lots but is unable to do so without a variance. The Board notes that the reinstatement of the prior lot lines would create two unequal lots. The Board

finds that the unique conditions of the Property have created an unnecessary hardship and exceptional practical difficulty for the Applicant who seeks to create 2 equal lots on a property that was previously subdivided.

- 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 into two equal lots but is unable to do while complying with the Sussex County Zoning Code. The Board is thus convinced that the variances from the lot width and lot size requirements are necessary to enable the reasonable use of the Property as the variances will allow the Applicant to reasonably subdivide the Property into equal lots consistent with the historical development of the Property. The Board is convinced that the size, shape, and location of the lots are reasonable when considering the historical use of the Property and the character of the neighborhood. The Board also notes that the Applicant is planning this subdivision for estate planning purposes and the proposed subdivision will allow her to retain two relatively equal lots.
- 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 conditions of the lot since the Property was previously subdivided but consolidated by a prior owner. The Property was developed into smaller lots prior to the enactment of the Sussex County Zoning Code and a resubdivision into those prior lots would not create equal lots. The Board was convinced that the Applicant did not create 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 from the lot width and lot size requirements to reasonably use the Property as proposed.
- e. The variances from the lot width and lot size requirements 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. It was clear from the record that the lots will be similar to other lots in the neighborhood and that the lots will be similar in size to the historical development of the Property. The Board notes that a neighbor appeared in support of the Application and no persons appeared in opposition to the requests. Moreover, there was no substantial evidence that the variances from the lot width and lot size requirements would somehow alter the essential character of the neighborhood or be detrimental to the public welfare.
- f. The variances sought from the lot size and lot width requirements are the minimum variances necessary to afford relief and those variances requested represent the least modifications possible of the regulations at issue. The Applicant has demonstrated that those variances will allow the Applicant to reasonably subdivide the Property into two equal sized lots which cannot otherwise be accomplished without these variances.
- 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.

- h. As part of the Board's decision, the Board granted the Applicant's request to withdraw her requests for the front yard, side yard, and rear yard variances. The Applicant has demonstrated good cause to withdraw that portion of the Application and the Board renders no decision on whether the Applicant has satisfied the requirements for the granting of the front yard, side yard, and rear yard variance requests.

The Board granted the variance application for the lot size and lot width requirements finding that those requests met the standards for granting a variance.

Decision of the Board

Upon motion duly made and seconded, the application for the variances from the lot size and lot width requirements was approved. The Board Members in favor were Mr. Jeffrey Chorman, Mr. Jordan Warfel, and Mr. John Williamson. No Board Members voted against the Motion to approve the application for the variances from the lot size and lot width requirements. Dr. Kevin Carson and Mr. Travis Hastings did not participate in the discussion or vote on this application.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY



Jeffrey Chorman
Chair

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

Date September 12, 2022