

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: TERRY HARMON

(Case No. 12739)

A hearing was held after due notice on September 19, 2022. The Board members present were: Dr. Kevin Carson, Mr. Jeffrey Chorman, Mr. John T. Hastings, Mr. Jordan Warfel, and Mr. John Williamson.

Nature of the Proceedings

This is an application for a variance from the minimum lot width requirement.

Findings of Fact

The Board found that the Applicant is requesting a variance of 34.33 feet from the 150 feet lot width requirement for a proposed lot. This application pertains to certain real property located on the south side of Frankford School Road approximately 0.56 miles from Thatcher Street (911 Address: 30410 Frankford School Road, Frankford); said property being identified as Sussex County Tax Map Parcel Number 533-1.00-21.00 ("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, and a survey of the Property dated April 2022.
2. The Applicant proposes to subdivide the Property into two lots identified as "Proposed Lot" and "+- 23 Acres Remaining" on the Survey – Site Plan: Application for a Variance from the Minimum Lot Width dated April 2022. The lot width variance is needed in order for the Applicant to subdivide the lots as proposed. The variance request is for the "Proposed Lot". Staff noted that the remaining portion of the Property ("the Residual Lands") has a 50 foot wide access and no variance is needed for the Residual Lands.
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 Terry Harmon was sworn in to testify about the Application.
5. The Board found that Mr. Harmon testified that his parents formerly owned a farm of 23 acres and they are now deceased. He noted that the farm was left to himself and his family and the family will put the farm up for sale.
6. The Board found that Mr. Harmon testified that he lives on the Proposed Lot and he never had his portion of the Property placed in his name due to personal matters in his past.
7. The Board found that Mr. Harmon testified that the family cannot sell the Residual Lands until the Proposed Lot is subdivided.
8. The Board found that Mr. Harmon testified that he has lived on the Proposed Lot for quite some time and has never had any issues with the neighbors to the sides or rear.
9. The Board found that Mr. Harmon testified that he informed the neighbors about the hearing tonight.
10. The Board found that Mr. Harmon testified that the previous subdivision of land and the resulting shape of the Property was completed when his parents still owned the land.
11. The Board found that Mr. Harmon testified that he is not looking to make any additions to the Proposed Lot as he was diagnosed with cancer a few years ago and it has impacted him financially. He intends to continue living on the Proposed Lot.
12. The Board found that Mr. Harmon testified that there are some ditches on the Proposed Lot that limit his ability to develop the lot further.

13. The Board found that Mr. Harmon testified that there will be no change to the width of the lot.
14. The Board found that no one appeared in support of or in opposition to the Application.
15. 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 for the variance from the lot width requirement met the standards for granting a variance. The findings below further support the Board's decision to approve the variance from the lot width requirement.
 - 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 has an existing house and drainage ditch which limit the ability to subdivide the proposed lot. The existing area where the house is located is bisected by a drainage ditch that runs to the rear of the lot. The Proposed Lot has been used separately from the remaining lands as it has been the Applicant's home for quite some time. The area where the house is located is on the Proposed Lot and the Proposed Lot is adjacent to Frankford School Road. At that point, the Property is narrow and the road frontage is limited. Accordingly, the Applicant is unable to create the Proposed Lot while meeting the road frontage requirements. Notably, proposed subdivided lots will effectively subdivide the Property in a manner which is similar to the historical use of the Property. The site where the Proposed Lot is to be located has been used for a house. Meanwhile, the Residual Lands have been used for other uses. This subdivision will formalize the historical separation of those uses. 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 but is 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 Applicant to reasonably subdivide the Property in a manner consistent with its historical use. The Board is convinced that the size, shape, and location of the Proposed Lot is 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 variance 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 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 effectively delineate a

property line where separate uses have long taken place. It is doubtful that the subdivision will be noticeable to neighbors since the use of the lots will remain the same. There was no evidence that the variance would somehow alter the essential character of the neighborhood or be detrimental to the public welfare.

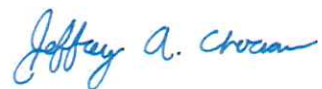
- f. The variance sought is the minimum variance necessary to afford relief and the variance requested represents the least modification possible of the regulation at issue. The Applicant has demonstrated that the variance sought will allow the Applicant to reasonably subdivide the Property while keeping 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 for the lot width requirement finding that the request met the standards for granting a variance.

Decision of the Board

Upon motion duly made and seconded, the application for the variance from the lot width requirement was approved. The Board Members in favor were Dr. Kevin Carson, Mr. Jeffrey Chorman, Mr. Travis Hastings, Mr. Jordan Warfel, and Mr. John Williamson. No Board Members voted against the Motion to approve the application for the variance from the lot width requirement.

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 November 21, 2022.