

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: DAVID MOORE & LISA MOORE

(Case No. 12743)

A hearing was held after due notice on October 3, 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 variances from the side yard and rear yard setback requirements for a proposed commercial dog kennel and its runs, cages or kennels.

Findings of Fact

The Board found that the Applicants are requesting the following variances:

1. A variance of 36.9 feet from the 200 feet setback requirement on the east side for a dog kennel;
2. A variance of 90.4 feet from the 200 feet setback requirement on the east side for a dog run;
3. A variance of 85.9 feet from the 200 feet setback requirement on the east side for a dog run;
4. A variance of 101.7 feet from the 200 feet setback requirement on the north side for a dog kennel;
5. A variance of 117.5 feet from the 200 feet setback requirement on the north side for a dog run;
6. A variance of 69.1 feet from the 200 feet setback requirement on the north side for a dog run;
7. A variance of 11.6 feet from the 200 feet setback requirement on the west side for a dog kennel; and
8. A variance of 9.7 feet from the 20 feet rear yard setback requirement for an existing detached garage.

This application pertains to certain real property that is a through lot located on the northeast side of Springwood Drive within the Lakewood Estates Subdivision (911 Address: 11025 Iron Hill Road, Delmar); said property being identified as Sussex County Tax Map Parcel Number 532-14.00-6.03 (hereinafter "the Property"). After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a building permit application, a site and variance plan dated June 2, 2022, deeds to the Property, aerial photographs of the Property, pictures of the Property and surrounding area, correspondence regarding the Application, and a portion of the tax map of the area.
2. The Board found that the Office of Planning & Zoning received two (2) letters in support of and no correspondence in opposition to the Application.
3. The Board found that David Moore and Lisa Moore were sworn in to give testimony about the Application. David Hutt, Esquire, presented the Application on behalf of the Applicants.
4. The Board found that Mr. Hutt stated that the Applicants would like to operate a commercial dog kennel on their property and require a number of variances in order to do so.
5. The Board found that Mr. Hutt stated that the Property consists of a little more than 7.2 acres on the north side of Iron Hill Road between Route 13 and Old Stage Road. He noted that, along Route 13 on the western side is Thermo King and the Metal

Shop, both of which are across from the entrance to Iron Hill Road and that, a little farther south, is the Delmar Race Track. According to Mr. Hutt, on the eastern side of Route 13, is Bailey's, West Auto, and Oakwood Homes.

6. The Board found that Mr. Hutt stated that properties along Iron Hill Road are made up of wooded areas, agricultural areas, single-family homes, and a small manufactured home community and that, on the other end of Iron Hill Road there are two (2) commercial businesses, Central Turf and Irrigation Supply and General Refrigeration.
7. The Board found that Mr. Hutt stated that there is a mixture of zoning for the area and the previous uses fall in line with the zoning as there is AR-1, GR, Commercial, and Industrial zoning in the area.
8. The Board found that Mr. Hutt stated that the Applicants purchased the Property in 2019 and the prior owner of the Property used it as an equestrian facility.
9. The Board found that Mr. Hutt stated that typically special use exceptions are requested for commercial dog kennels in addition to variances but this property meets the acreage requirement under § 115-20 of the Sussex County Zoning Code and is a permitted use without a special use exception.
10. The Board found that Mr. Hutt stated that the variances are required for the kennels and runs because they do not comply with the 200 feet setback requirement.
11. The Board found that Mr. Hutt stated that the barn at the rear of the Property is where the dogs would be kept and the only time the dogs would be out of the barn would be for walks and relief purposes. He noted that the former track or pasture area, which is adjacent to the barn, would be used for the walking of the dogs.
12. The Board found that Mr. Hutt stated that, when looking at the site plan, it highlights the various variance ranges that are being requested and are required.
13. The Board found that Mr. Hutt stated that the Property is unique due to its shape and the varying width and that, with the shape and width of the Property, there is no way to locate the runs and kennels 200 feet off the property line.
14. The Board found that Mr. Hutt stated that there is a very narrow window for the placement of the runs and kennels that would comply based on the size of the Property but that does not take into account the location of the well and septic.
15. The Board found that Mr. Hutt stated that the variances are necessary to enable the reasonable use of a commercial dog kennel on the Property.
16. The Board found that Mr. Hutt stated that the need for the variances were not created by the Applicants as they bought the Property as it is and did not create the lot nor its shape.
17. The Board found that Mr. Hutt stated that the requests are to use the existing structure on the property and integrate the improvements of the Property into the operation of the dog kennel.
18. The Board found that Mr. Hutt stated that the proposed variances will not alter the essential character of the neighborhood and that there will be nothing new added to the Property.
19. The Board found that Mr. Hutt stated that the structures on the Property sit back away from Iron Hill Road and to a person driving by you would not know that there is anything different taking place on the Property.
20. The Board found that Mr. Hutt stated that there are letters of support from the neighbors that surround the Property and the Applicants consulted with their neighbors prior to moving forward with their plan. He noted that the support letter from the Krepps indicates a natural audio buffer which is the landscaping that is positioned between the Krepps' property and the Property.
21. The Board found that Mr. Hutt stated that these are the minimum variances requested and the Applicants planned to use the existing structures on the Property that were installed by the prior owners.

22. The Board found that Mr. Hutt stated that the last variance listed is for the garage at the rear of the Property which was on the Property when his clients purchased the Property and that this structure was permitted but was picked up on the survey when preparing for the Application.
23. The Board found that Mr. Hutt stated that there is a bit of water laying on the Property to the rear which he is unsure if it is a type of wetlands but the water would limit the ability to develop it further.
24. The Board found that Mr. Hutt stated that the red barn is a proposed kennel but the building is already constructed.
25. The Board found that Mr. Hutt stated that the garage is to the rear of the barn or proposed kennel and the red barn and the pasture area will be used for the kennel operations.
26. The Board found that Mr. Hutt stated that the variances requested are for all areas in relation to the kennel operations that require a variance.
27. The Board found that Mr. Hutt stated that the Zoning Code states 200 feet are needed from the property lines to kennels, runs and cages.
28. The Board found that Mr. Hutt stated that, if they changed locations of structures, they would still need alternative variances but this proposal is the most efficient and effective plan for their operation.
29. The Board found that Mr. Hutt stated that, when the Property was laid out as an equestrian facility, it was designed for the horses to leave the barn directly into the pasture area and the Applicants used that same plan and premise for their proposed operation.
30. The Board found that Mr. Hutt stated that the Property becomes narrower as you go towards Iron Hill Road as the Property is 420 feet at its widest point and is only 340 feet wide at the front property line.
31. The Board found that Mr. Hutt stated that, to build a kennel and the associated runs in the small area allowed, is not feasible even though this is a 7 acre lot.
32. The Board found that Mr. Hutt stated that it is an existing horse barn that will be used as a commercial dog kennel.
33. The Board found that Mr. Moore testified that he affirms what Mr. Hutt stated is true and accurate.
34. The Board found that Mr. Moore testified that there will be approximately 10-12 dogs on site.
35. The Board found that Mr. Moore testified that this facility will not be a breeding facility but a long-term storage kennel.
36. The Board found that Mr. Moore testified that there will be minimal traffic to and from the Property.
37. The Board found that Mr. Moore testified that the lands behind them were a borrow pit from when the highway was created and would not be able to be developed.
38. The Board found that Mr. Moore testified that the kennel would be by appointment only and they would allow drop off at 6:30 or 7:00 am and that pick up would be as late as 6:30 or 7:00 pm.
39. The Board found that Mr. Moore testified that there will be no additional employees outside of their family.
40. The Board found that Mr. Moore testified that the red barn was used for equestrian purposes prior to their ownership.
41. The Board found that Mr. Moore testified that the horse barn was existing when they purchased the Property and they are converting it to a dog kennel.
42. The Board found that Mr. Moore testified that the septic and well are located in the widest portion of the Property.
43. The Board found that no one appeared in support of or in opposition to the Application.

44. 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 size, shape, and historical development. The Property consists of over 7 acres and is a long, narrow lot. The Property was previously used by a prior owner as an equestrian facility. The Applicants acquired the Property and intend to use it for a commercial dog kennel. The Property was previously developed by prior owners with the existing structures and the Applicants intend to use those structures; albeit for a different purpose. Due to the narrowness of the Property, however, the lot cannot be used for a commercial dog kennel without a variance. The Board also notes that the Property is improved by a well and septic system and the location of those systems further limit the buildable area. The Board finds that these conditions are unique and have created an exceptional practical difficulty and unnecessary hardship for the Applicants.
 - 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 and situation, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Applicants seek to use the Property for a commercial dog kennel but are 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 a reasonably sized commercial dog kennel and related structures to be used on the Property. The Board is convinced that the size, shape, and location of the commercial dog kennel and related structures are reasonable. The Board also finds that the shed in the rear of the Property, which was placed by a prior owner nearly 30 years ago, is necessary to enable the reasonable use of the Property.
 - d. The exceptional practical difficulty and unnecessary hardship were not created by the Applicants. The Property has unique conditions as aforesaid and the unique characteristics of the Property are clear when reviewing the survey and the testimony from the Applicants. The Board is convinced that the unnecessary hardship and exceptional practical difficulty were not created by the Applicants but were created the lot's unique characteristics and creation and development of the lot by a prior owner which greatly constrained by the Applicants' intended 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 the commercial dog kennel and related structures will have no adverse effect on the character of the neighborhood. The neighborhood is rural in nature and the use is consistent with uses in the neighborhood and the prior use of the Property as an equestrian facility. The surrounding neighbors support the request and there are businesses, wooded lands, a burrow pit nearby. Furthermore, there was no substantial evidence provided which demonstrated that the variances would somehow alter the essential character of the neighborhood or be detrimental to the public welfare. The Board also notes that the existing shed has been on the lot for nearly 30 years without complaint.
 - 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 Applicants have demonstrated that the variances sought will allow the commercial dog kennel and related structures to be reasonably used and for the existing shed to remain on the lot. The Applicants have placed the dog kennel structures on a wider portion of the lot so as to minimize the encroachments. The shed in the rear, which is already existing, will not be enlarged or modified as part of this request.

- 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 Dr. Kevin Carson, Mr. Jeffrey Chorman, Mr. Travis Hastings, Mr. Jordan Warfel, and Mr. John Williamson. No Board Member voted against the Motion to approve the variance 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 December 12, 2022.