

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: ROBERT L. REED & STELLA R. REED

(Case No. 12408)

A hearing was held after due notice on February 3, 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 road frontage requirement for proposed lots.

Findings of Fact

The Board found that the Applicants are requesting a variance of 120 feet from the 150 feet lot width requirement to reinstate a lot that was previously combined. This application pertains to certain real property located on the east side of Blanchard Road approximately 740 feet north of McDowell Lane and on the north side of Deer Meadows Road approximately 0.46 miles west of Blanchard Road (911 Address: 12249 Blanchard Road, Greenwood); said property being identified as Sussex County Tax Map Parcel Number 5-30-8.00-10.00. After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a survey of the Property, an aerial photograph of the Property, and a portion of the tax map of the area.
2. The Applicant proposes to subdivide a parcel by creating two lots. One lot will be located off Blanchard Road and will consist of 21.396 acres (more or less) as shown on the survey as Parcel "A". The other lot will be located off Deer Meadow Road and will consist of 105.673 acres (more or less) as shown on the survey as Parcel "B". This variance pertains to Parcel "B".
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 Robert Reed and Stella Reed were sworn in to give testimony about the Application.
5. The Board found that Mr. Reed testified that the Property was originally two parcels and he would like to return it to the original lot lines as shown in the legal descriptions in the deed.
6. The Board found that Mr. Reed testified that, if the variance is not granted, the parcel cannot be separated.
7. The Board found that Mr. Reed testified that the Applicant combined the parcels for tax reasons in 1987 and would like to re-subdivide the parcels for retirement and estate planning purposes.
8. The Board found that Mr. Reed testified that the Property consisted of 2 separate farms.
9. The Board found that Mr. Reed testified that there is an existing dirt driveway off Deer Meadows Road which has been there all of his life and is used for farm equipment. There is land on both sides of the driveway.
10. The Board found that Mr. Reed testified that he would not have combined the lots had he known about the road frontage issue.
11. The Board found that Mr. Reed testified that this subdivision will not alter the essential character of the neighborhood as there is an existing dirt road that has existed prior to 1975.

12. The Board found that Mr. Reed testified that he has no plans to change the use of the Property and the Property will remain farmland.
13. The Board found that Ms. Reed testified that they are not planning to sell the Property and that the Property was historically 2 farms.
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 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 and shape. While the Property is large and easily has enough acreage to be subdivided into 2 lots, the Property has a unique shape. Specifically, the Property only has 30 feet of road frontage along Deer Meadow Road. Accordingly, the Applicants are unable to create these 2 lots while meeting the road frontage requirements. Notably, proposed subdivided lots will effectively subdivide the Property into 2 lots in a manner which is similar to the historical use of the Property. Both parcels also have had separate road entrances for many years. 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 into 2 lots 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 lots are reasonable.
 - 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 effectively delineate a property line where separate uses have long taken place. The residual lands have historically been used for separate farms and the proposed lot line is consistent with historical lot lines. It is doubtful that the subdivision will be noticeable to neighbors since the use of the lots will remain the same and no new entrances will be created. Rather, the lots already have separate entrances. There was no evidence that the variances would somehow alter the essential character of the neighborhood or be detrimental to the public welfare.

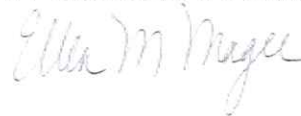
- f. The variance sought is the minimum variance necessary to afford relief and the variance requested represents the least modification possible of the regulation at issue. The Applicants have demonstrated that the variance sought will allow the Applicants to reasonably subdivide the Property while 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 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 Member 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 May 5, 2020.