

**BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY**

**IN RE: CYRIL H. PRICE & DORIS DAVIS PRICE**

**(Case No. 12411)**

A hearing was held after due notice on February 17, 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 22.56 feet from the 150 feet lot width requirement for proposed Parcel "A" and a variance of 54.49 feet from the 150 feet lot width requirement for proposed Parcel "B". The proposed lots are as shown on a survey dated November 26, 2019. This application pertains to certain real property located on the south side of Mount Joy Road (Route 5) approximately 0.32 miles northwest of John J. Williams Highway (Route 24) (911 Address: 30692 & 30882 Mount Joy Road, Millsboro); said property being identified as Sussex County Tax Map Parcel Number 2-34-29.00-31.00. After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a survey dated November 26, 2019, 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 along Mount Joy Road. One lot will measure 15.332 acres and is identified as Parcel "A" on the survey dated November 26, 2019. The other lot will measure 0.961 acres and is identified as Parcel "B" on the survey. This variance request pertains to both parcels.
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 Ms. Cyril Price was sworn in to give testimony about the Application. Mackenzie Peet, Esquire, presented the Application on behalf of the Applicants.
5. The Board found that Ms. Peet stated that the Property is zoned AR-1 and the Applicants propose to subdivide the Property into 2 lots.
6. The Board found that Ms. Peet stated that the Applicants have lived on this property since 1974.
7. The Board found that Ms. Peet stated that, if the request is approved, Parcel B, will be transferred to the Applicants' son.
8. The Board found that Ms. Peet stated that the Property is unique as it has two dwellings on one parcel.
9. The Board found that Ms. Peet stated that the Property was previously subdivided which previously reduced the road frontage and there is not enough frontage on the existing parcel to allow for 150 feet of road frontage on the proposed lots. As such, the Property cannot be subdivided without the variance.
10. The Board found that Ms. Peet stated that the variances are necessary to enable the reasonable use of the Property.
11. The Board found that Ms. Peet stated that the exceptional practical difficulty was not created by the Applicants.

12. The Board found that Ms. Peet stated that the parcel had two dwellings with separate septic systems prior to the Applicants' purchase of the Property.
13. The Board found that Ms. Peet stated that the variances will not alter the essential character of the neighborhood as the subdivision will be consistent with surrounding parcels and dwellings.
14. The Board found that Ms. Peet stated that that this request represents the least modification to allow for the subdivision of the Property.
15. The Board found that Mr. Price testified that the homes were built in the late 1930s and the houses have been remodeled.
16. The Board found that Mr. Price testified that there is a shared driveway which is also used for the Nanticoke Pow Wow.
17. The Board found that Mr. Price affirmed the statements made by Ms. Peet as true and correct.
18. The Board found that no one appeared in support of or in opposition to the Application.
19. 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 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 is narrow and the road frontage is limited. 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. The site has been used for many years as a property with two dwellings and this subdivision will formalize the historical separation of those uses. 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 comply with the Sussex County Zoning Code. The Board is thus convinced that the variances are necessary to enable the reasonable use of the Property as the variances 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 has 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 variances 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.



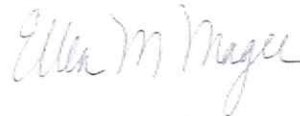
- e. The variances will not alter the essential character of the neighborhood nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare. The Board is convinced that proposed subdivision will have no effect on the character 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 and no new entrances will be created. Rather, the lots will use an existing shared entrance. 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 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 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.