

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

**IN RE: GLENVILLE HOLLOW FARMS**

**(Case No. 12420)**

A hearing was held after due notice on March 2, 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 a proposed lot.

Findings of Fact

The Board found that the Applicant is requesting a variance of 12.44 feet from the 150 feet lot width requirement for a proposed lot (Lot 10) fronting onto Bridgeville Highway. This application pertains to certain real property located on the west side of Bridgeville Highway (Route 13A) approximately 0.54 miles southwest of Sussex Highway (Route 13) (911 Address: 22358 Bridgeville Highway, Seaford); said property being identified as Sussex County Tax Map Parcel Number 3-31-3.00-145.00 (Portion of). After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, photographs, a survey dated February 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 Bridgeville Highway. One lot is identified as Lot 10 on the survey dated February 26, 2019. This variance request pertains to the proposed Lot 10.
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 Cindy Yingling was sworn in to give testimony about the Application. Mr. Michael McGroerty, Esquire, presented the Application on behalf of the Applicant and he submitted pictures to the Board to review.
5. The Board found that Mr. McGroerty stated that the Property is unique as there is only approximately 137 feet between the property line and the farm lane.
6. The Board found that Mr. McGroerty stated that there is a large drainage ditch and 3 transmission poles on the site.
7. The Board found that Mr. McGroerty stated that there are unique physical and topographical conditions which prevent extending the proposed lot.
8. The Board found that Mr. McGroerty stated that the proposed lot could not otherwise be developed due to the physical conditions of the lot.
9. The Board found that Mr. McGroerty stated that, without the variance, the farm lane would run the length of the new lot and the new owners would have farm equipment crossing their property. The variance will allow the farm lane to be on a separate lot from the proposed lot.
10. The Board found that Mr. McGroerty stated that the exceptional practical difficulty was not caused by the owner but by the fact that is not enough frontage between the farm lane and the highway entrance.
11. The Board found that Mr. McGroerty stated that nearby properties also have limited road width as there are lots which measure 75 feet, 79 feet, 88 feet, and 121 feet wide nearby.

12. The Board found that Mr. McGroerty stated that granting this variance will not alter the essential character of the neighborhood as the proposed lot will have more road frontage than several lots in the immediate area.
13. The Board found that Mr. McGroerty stated that the variance requested is a minimum variance to afford relief.
14. The Board found that Ms. Yingling affirmed the statements made by Mr. McGroerty as true and correct.
15. The Board found that Ms. Yingling testified that the farm consists of 134 acres and there is a farm building behind the proposed lot.
16. The Board found that Ms. Yingling testified that there used to be a house on the proposed lot but it was torn down.
17. The Board found that Ms. Yingling testified that the portion of the farm where the proposed lot is to be located is currently unusable but, by granting the variance, it will become a usable lot and can be developed.
18. The Board found that Ms. Yingling testified that the lane is 13 feet wide and is used for farm equipment.
19. The Board found that Mr. McGroerty stated that the farm lane cannot be moved and there are concerns about the impact on irrigation and the ditch.
20. The Board found that no one appeared in support of or in opposition to the Application.
21. 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 an existing farm lane and drainage ditch which limit the ability to subdivide the proposed lot. The existing lane is 137.56 feet from neighboring lands and the ditch is near the lane. Consequently, the farm lane cannot be moved to thereby widen the proposed lot and the Applicant is constrained in its ability to otherwise subdivide the lot. At that point, the property is narrow and the road frontage is limited. Accordingly, the Applicant is unable to create this proposed lot while meeting the road frontage requirements. Notably, proposed subdivided lots will effectively subdivide the Property into a lot in a manner which is similar to the historical use of the Property. The site where Parcel 10 is to be located was used for many years with a house until the house was recently torn down. Meanwhile, the area behind Parcel 10 has been used for agricultural 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. The Board is convinced that the size, shape, and location of the proposed Parcel 10 is reasonable.

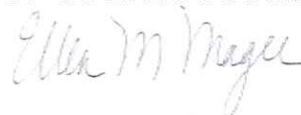
- d. The unnecessary hardship and exceptional practical difficulty were not created by the Applicant. As discussed above, the Property has unique conditions which have limited the Applicant's ability to reasonably subdivide the Property. The Applicant did not create the unique shape of the lot and the 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 need 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. The Board also notes that lots with lesser lot widths are in the area.
- 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 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.