

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: RONNIE GAINES & DEBBIE GAINES

(Case No. 12450)

A hearing was held after due notice on July 20, 2020. The Board members present were: Dr. Kevin Carson, Ms. Ellen Magee, Mr. John Williamson and Mr. Brent Workman.

Nature of the Proceedings

This is an application for variances from the minimum lot width requirement and the minimum lot size requirement for a proposed subdivision.

Findings of Fact

The Board found that the Applicants intend to subdivide the below described property into 3 lots which are identified on a minor subdivision plan dated March 23, 2020, as Proposed Lot 1, Proposed Lot 2, and Proposed Lot 3. The Applicants seek the following variances: 1) a variance of 49.87 feet from the 150 foot lot width requirement for Proposed Lot 1, 2) a variance of 49.86 feet from the 150 foot lot width requirement for Proposed Lot 2, 3) a variance of 49.86 feet from the 150 foot lot width requirement for Proposed Lot 3, 4) a variance of 0.29 acres from the 0.75 acre lot size requirement for Proposed Lot 1, 5) a variance of 0.29 acres from the 0.75 acre lot size requirement for Proposed Lot 2, and 6) a variance of 0.29 acres from the 0.75 acre lot size requirement for Proposed Lot 3. This application pertains to certain real property located on the west side of Bi-State Boulevard (Route 13A) approximately 0.25 miles south of Dickerson Road (911 Address: 34052, 34062 and 34072 Bi-State Boulevard, Laurel); said property being identified as Sussex County Tax Map Parcel Number 3-32-3.00-58.00. 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, a letter of no objection from DeIDOT, and a survey dated March 23, 2020.
2. The Board found that the Office of Planning & Zoning received no correspondence in support of or in opposition to the Application.
3. The Board found that Michael Cotten and Deborah Gaines were sworn in to testify about the Application.
4. The Board found that Mr. Cotten testified that the Property is unique as there are three residential homes on one single parcel.
5. The Board found that Mr. Cotten testified that there is no development planned at this time other than to create 3 separate lots.
6. The Board found that Mr. Cotten testified that each house has its own individual well, septic system, and entrance.
7. The Board found that Mr. Cotten testified that DeIDOT has approved the subdivision of the lot.
8. The Board found that Mr. Cotten testified that the lots cannot meet the lot size or lot width requirements.
9. The Board found that Mr. Cotten testified that the homes were constructed prior to the Applicants' ownership.
10. The Board found that Mr. Cotten testified that DNREC will require a shared septic system if the houses remain on 1 lot.
11. The Board found that Mr. Cotten testified that the variances will not alter the essential character of the neighborhood as the houses will exist in the same manner with individual entrances.
12. The Board found that Mr. Cotten testified that the area and frontage are evenly split.
13. The Board found that Mr. Cotten testified that there are similar parcels in the area.

14. The Board found that Mr. Cotten testified that the houses were built in the 1950s or 1960s.
15. The Board found that Ms. Gaines testified that the houses were built in the 1950s and the three houses are rental properties which her husband inherited in 2013.
16. The Board found that Ms. Gaines testified that the houses have separate wells and septic systems and that DNREC required that all three septic systems be inspected when the Applicants requested one inspection because the 3 existing septic systems are all located on one lot.
17. The Board found that Ms. Gaines testified that the Applicants decided to subdivide the Property and realized that they needed variances to create the subdivision.
18. The Board found that Ms. Gaines testified that a number of other properties in the area have less than 150 feet of road frontage.
19. The Board found that Ms. Gaines testified that the Property is not in compliance with land use regulations since there are three dwellings on one lot.
20. The Board found that no one appeared in support of or 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 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 development, size, and historical use. The Property has been developed by three separate dwellings with separate wells, septic systems, and entrances since the 1950s or 1960s. The lots also appear to have separate addresses. Even though the lots appear to be separate, the lots are actually combined into 1 lot. The Applicants seek to subdivide the Property in accordance with its historical use. The resulting lots, however, are smaller than $\frac{3}{4}$ acre and do not meet the lot width requirements. The size of the Property limits this subdivision and necessitates a variance. 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 and the Property, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Applicants seek to reasonably subdivide the Property into 3 lots but are unable to do while complying 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 in a manner consistent with the Property's historical use. 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 or place the houses on the lot. 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 variances in order to reasonably subdivide the Property as proposed.
 - 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 create three lots which have already been in practical existence for many years. There will be no apparent change in the use of these lots after the subdivision takes place. The evidence also demonstrates that there are similarly sized lots in the area. The Board heard no evidence that the variances would somehow alter the essential character of the neighborhood or be detrimental to the public welfare.

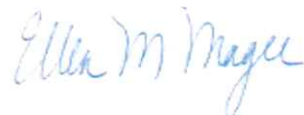
- f. The variances sought are the minimum variances necessary to afford relief and the variances requested represent the least modifications possible of the regulations at issue. The Applicants have demonstrated that the variances sought will allow the Applicants to reasonably subdivide the Property 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, Ms. Ellen Magee, Mr. John Williamson, and Mr. Brent Workman. No Board Members voted against the Motion to approve the variance application. Mr. Jeffrey Chorman did not participate in the discussion or vote on this 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 September 21, 2020.