

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

**IN RE: WILLIAM MOORE and JULIE MOORE**

**(Case No. 11571)**

A hearing was held after due notice on May 18, 2015. The Board members present were: Mr. Dale Callaway, Mr. Jeff Hudson, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman.

**Nature of the Proceedings**

This is an application for a variance from the front yard setback requirement.

**Findings of Fact**

The Board found that the Applicants were seeking a variance of fifteen (15) feet from the thirty (30) feet front yard setback requirement for a through lot for a proposed dwelling. This application pertains to certain real property located east of Road 348 (Irons Lane) and being northeast of Prestwick Court, approximately 180 feet south of Turnberry Drive and being more specifically Lot 84 within Fairway Villas Development; said property being identified as Sussex County Tax Map Parcel Number 1-34-3.00-766.00.

1. The Board was given copies of the Application, a letter from William Scott, Esquire, a portion of the tax map of the area, a survey dated December 2, 2014, a portion of the Sussex County Zoning Code, and a letter from Thomas Hunsberger.
2. The Board found that the Office of Planning & Zoning received one (1) letter in support of the Application and had not received any correspondence in opposition to the Application.
3. William Moore and Julie Moore were sworn in to testify about the Application. William Scott, Esquire, presented the case on behalf of the Applicants. Mr. Scott submitted a booklet of exhibits to the Board.
4. The Board found that Mr. Scott stated that the Property is a through lot located in Fairway Village and that Applicants purchased one (1) of the two (2) lots that has frontage on both Turnberry Drive and Prestwick Court.
5. The Board found that Mr. Scott stated that Prestwick Court, which is a cul-de-sac, created the through lot and the Property is not a typical through lot because Prestwick Court is a dead end street and not a thoroughfare. Prestwick Court is used by four parcels which only have road access to Prestwick Court.
6. The Board found that Mr. Scott stated that the Homeowners Association and neighbors on both sides of the Property support the Application.
7. The Board found that Mr. Scott stated that the Homeowners Association has mandated that the Applicants must access their lot from Turnberry Drive. Prestwick Court would effectively be to the rear yard of the Property.
8. The Board found that Mr. Scott stated that William Moore has Parkinson's Disease and must have wheelchair accessibility throughout the dwelling. The proposed dwelling has been designed with wider doorways and hallways for the Applicant. Mr. Moore needs extra space to maneuver his chair and scooter around the house.
9. The Board found that Mr. Scott stated that Mr. Moore has a motorized chair and that the proposed attached garage will allow for access for their van with a ramp for his scooter.
10. The Board found that Mr. Scott stated that Mr. Moore has been encouraged to exercise and engage in activity such as playing drums to slow the progress of his

disease. There will also be a room for the Applicant's exercise and physical therapy equipment.

11. The Board found that Mr. Scott stated that no side setback variance is being requested, which was a concern of a neighbor.
12. The Board found that Mr. Scott stated that the existing cul-de-sac and through lot setback requirements make this property unique. The Property is one of only two properties in the neighborhood with this double frontage. This is also an atypical through lot.
13. The Board found that Mr. Scott stated that the Applicants will suffer an unnecessary hardship and exceptional practical difficulty if the variance is not approved because they will not be able to construct a house with rooms of a size able to accommodate Mr. Moore's needs.
14. The Board found that Mr. Scott stated that the Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code and accommodate the Applicant's needs.
15. The Board found that Mr. Scott stated that the variance is necessary to enable reasonable use of the Property.
16. The Board found that Mr. Scott stated that the Applicants did not create the shape of the lot or the double frontage.
17. The Board found that Mr. Scott stated that the exceptional practical difficulty was not created by the Applicants.
18. The Board found that Mr. Scott stated that the variance will not alter the essential character of the neighborhood. The use will not adversely impair the uses of the neighboring and adjacent properties and the use is not detrimental to the public welfare.
19. The Board found that Mr. Scott stated that the variance requested is the minimum variance to afford relief.
20. The Board found that Mr. Scott stated that the home is designed to allow for first floor living and that the second floor bedrooms will be used for guests.
21. The Board found that Mr. Moore, under oath, confirmed the statements made by Mr. Scott.
22. The Board found that five (5) parties appeared in support of the Application.
23. The Board found that no parties appeared in opposition to the Application.
24. 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 has a unique shape which is apparent when reviewing the survey attached the Application. The Property is one of two lots in the community which has frontage on two roads. The adjacent Prestwick Court is used as the primary access for four neighboring lots whereas the Property is accessed by the adjacent Turnberry Drive. The Property is located adjacent to a cul-de-sac and the western side of the Property is thus significantly curved. The uniqueness of the Property has created an exceptional practical difficulty for the Applicants who need to design a house to accommodate William Moore, who suffers from Parkinson's disease.
  - b. Due to the uniqueness of the Property, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The proposed dwelling, as shown on the survey, is of a reasonable size and shape. The Applicants seek the requested variance in order to construct the dwelling on the Property and no additional variances are requested. The Board is convinced that the variance is necessary to enable the reasonable use of

the Property as the variance will allow the Applicants to construct a reasonably sized dwelling that will accommodate William Moore's needs. The Board found particularly compelling the testimony that Mr. Moore needs a home with first floor living, wider doorways, wider hallways and larger rooms to allow him to maneuver his motorized chair and scooter throughout the dwelling. The proposed dwelling appears to accommodate Mr. Moore's needs. The Board is convinced that the size, shape and location of the dwelling are reasonable; which is confirmed when reviewing the survey.

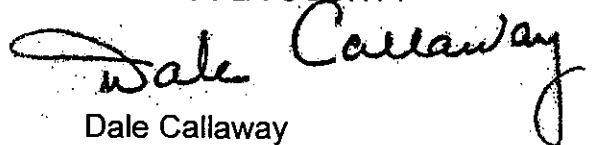
- c. The exceptional practical difficulty was not created by the Applicants. The Property's unique shape has created a unique building envelope; particularly on the side facing Prestwick Court. The lot is also a through lot which further limits the buildable area. The Applicants did not create the unique shape of the Property or its status as a through lot. As such, it is clear to the Board that the exceptional practical difficulty was not created by the Applicants. Additionally, the fact that Mr. Moore suffers from Parkinson's disease has also created an exceptional practical difficulty for the Applicants because they need to build a home to accommodate his needs – which requires them to build outside of the existing building envelope.
- d. 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 the dwelling will not have a negative impact on the neighborhood. No evidence was presented which would indicate that the variance would somehow alter the essential character of the neighborhood or be detrimental to the public welfare. Rather, the Applicant produced letters of support from neighbors and the Homeowners Association.
- e. 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 proposed dwelling to be constructed as indicated on the survey and that the dwelling will accommodate Mr. Moore's needs. No additional variances are being requested.

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 Mr. Dale Callaway, Mr. Jeff Hudson, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman. No Board Members voted against the Motion to approve the variance application.

BOARD OF ADJUSTMENT  
OF SUSSEX COUNTY

  
Dale Callaway  
Chairman

If the use is not established within one (1)  
year from the date below the application  
becomes void.

Date July 7, 2015