

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

**IN RE: DEWAYNE R. FAIR AND MONA L. FAIR**

**(Case No. 11697)**

A hearing was held after due notice on January 25, 2016. The Board members present were: Mr. Dale Callaway, Mr. John Mills, Mr. Jeff Hudson, Mr. Norman Rickard, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for variances from the front yard and side yard setback requirements.

Findings of Fact

The Board found that the Applicants are seeking a variance of 1.4 feet from the thirty (30) feet front yard setback requirement for an existing dwelling, a variance of 4.7 feet from the ten (10) feet side yard setback requirement for an existing outside shower, a variance of 4 feet from the thirty (30) feet front yard setback requirement for an existing screen porch, and a variance of 6 feet from the thirty (30) feet front yard setback requirement for an existing set of steps. This application pertains to certain real property is located on the north side of Vacation Road approximately 220 feet west of Independence Drive (911 Address: 31067 Vacation Road, Millsboro); said property being identified as Sussex County Tax Map Parcel Number 2-34-23.00-81.00.

1. The Board was given copies of the Application, a portion of the tax map of the area, and a survey of the Property dated September 17, 2015.
2. The Board found that the Office of Planning & Zoning received had not received any correspondence in support of or in opposition to Application.
3. Charity Swain was sworn in to testify about the Application and Craig Aleman, Esquire, appeared on behalf of the Applicants.
4. The Board found that Mr. Aleman stated that the Property is narrow and the driveway is in the center of the Property, which makes it unique.
5. The Board found that Mr. Aleman stated that at the existing home is a Class "C" manufactured home on a permanent foundation. The home has been on the same footprint since 1984 and no changes have been made to the Property since 1984.
6. The Board found that Mr. Aleman stated that the Applicants purchased the Property in 2014 and no survey was completed at that time. The Applicants are selling the Property and a recent survey completed for settlement showed the encroachments.
7. The Board found that Mr. Aleman stated that the neighboring property owners support the Application.
8. The Board found that Mr. Aleman stated that the Property cannot otherwise be developed and the variances are necessary enable reasonable use of the Property.
9. The Board found that Mr. Aleman stated that the lot is small with limited building space and the structures would have to be destroyed to bring the Property into compliance.
10. The Board found that Mr. Aleman stated that the exceptional practical difficulty was not created by the Applicants.
11. The Board found that Mr. Aleman stated that the variances will not alter the essential character of the neighborhood and the use is not detrimental to the public welfare.

12. The Board found that Mr. Aleman stated that the variances are the minimum variances to afford relief and the variances requested are the least modifications of the regulations at issue.
13. The Board found that Mr. Aleman stated that the location of the well and septic system prohibit the ability to move the structures into compliance.
14. The Board found that Ms. Swain, under oath, affirmed the statements made by Mr. Aleman.
15. The Board found that no parties appeared in support of or in opposition to the Application.
16. 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. The Property is quite small and narrow as evidenced by the survey. The unique size of the Property has created a limited buildable area available to the Applicants and has created an exceptional practical difficulty for the Applicants who seek to retain an existing home, porch, and outdoor shower on the lot. The small building envelope is further limited by the location of the well and septic system on the Property.
  - b. Due to the uniqueness of the lot, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property has a unique size and the buildable area thereof is limited due to its size. The Applicants seek to retain an existing home, porch, and outdoor shower but are unable to do so without violating the Sussex County Zoning Code. The Board is convinced that the variances are necessary to enable the reasonable use of the Property as the variances will allow a reasonably sized home, porch, and outdoor shower to remain on the Property. The structures have been in their current location for many years. It is unlikely that the structures can be moved into compliance without great expense, if at all. The Board is convinced that the shape and location of these structures are reasonable, which is confirmed when reviewing the survey provided by the Applicants.
  - c. The exceptional practical difficulty was not created by the Applicants. The Applicants did not create the unusual size of the Property. The unique lot size has resulted in a limited building envelope on the Property and the small building envelope has created the exceptional practical difficulty. This small building envelope was further limited by the location of the well and septic system on the Property. The unique characteristics of the Property are clear when reviewing the survey. Furthermore, the structures were placed on the Property by a prior owner and have been in their present location for many years. The Board is convinced that the exceptional practical difficulty was not created by the Applicants but was created the lot's unique characteristics and by the placement of the structures by a prior owner.
  - d. 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 the structures will have no effect on the character of the neighborhood as they have been on the Property for many years. Despite the longstanding location of the structures, no complaints were noted in the record about the location of the garage and dwelling. In fact, the testimony reflects that the neighboring property

owners support this application. Furthermore, no evidence was presented which would indicate that the variances would somehow alter the essential character of the neighborhood or be detrimental to the public welfare.

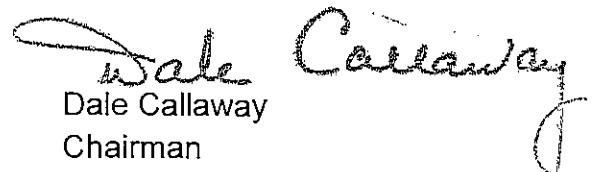
- e. The variances sought are the minimum variances necessary to afford relief and the variances requested represent the least modifications possible of the regulations at issue. The Applicants have demonstrated that the variances sought will allow the Applicants to retain an existing home, porch, and outdoor shower. No variances for additions to these structures are being sought.

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 Member 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 March 22, 2016