

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

**IN RE: DARLENE FENSTERMACHER**

**(Case No. 11926)**

A hearing was held after due notice on March 7, 2017. 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 Applicant is seeking a variance of 0.8 feet from the fifteen (15) feet side yard setback requirement on the east side for a proposed covered porch, a variance of 5.7 feet from the thirty (30) feet front yard setback requirement for a proposed porch, and a variance of 1.4 feet from the ten (10) feet side yard setback requirement on the west side for a proposed dwelling. This application pertains to certain real property is located on the south west corner of William F. Street and Fisher Street approximately 550 feet east of Coastal Highway (Route 1) (911 Address: 20636 Fisher Street, Rehoboth Beach); said property being identified as Sussex County Tax Map Parcel Number 3-34-20.09-91.01.

1. The Board was given copies of the Application, a portion of the tax map of the area, an aerial photograph of the Property, Findings of Fact for Case No. 8371-2003, and a survey of the Property dated January 12, 2017.
2. The Board found that the Office of Planning & Zoning received two (2) letters in support of the Application and no correspondence in opposition to the Application.
3. The Board found that Darlene Fenstermacher was sworn in to testify about the Application.
4. The Board found that Ms. Fenstermacher testified that the Property is unique because it is a corner lot.
5. The Board found that Ms. Fenstermacher testified that there is currently a modular home on the Property and the Applicant intends to remove the existing dwelling.
6. The Board found that Ms. Fenstermacher testified that the existing dwelling does not comply with the setback requirements. The Applicant received approval in 2003 for a variance.
7. The Board found that Ms. Fenstermacher testified that the Applicant worked with a designer to try to design a home that would fit on the lot but the additional size of the home makes a big difference in the interior layout of the home.
8. The Board found that Ms. Fenstermacher testified that the variance was not created by the Applicant.
9. The Board found that Ms. Fenstermacher testified that the proposed dwelling will improve the character of the neighborhood.
10. The Board found that Ms. Fenstermacher testified that she spoke with two neighbors who both support the Application.
11. The Board found that Ms. Fenstermacher testified that the variances requested are the minimum variances necessary to afford relief.
12. The Board found that Ms. Fenstermacher testified that the proposed dwelling is two inches narrower than the existing dwelling. The proposed dwelling will be two stories tall.
13. The Board found that Ms. Fenstermacher testified that the encroachment in the corner side yard is for a stoop to the covered porch and is only 6 feet wide.

14. The Board found that Ms. Fenstermacher testified that, if the lot was not a corner lot, only one variance would be needed.
15. The Board found that Ms. Fenstermacher testified that there is a large gap from Fisher Street and William F. Street to her property lines.
16. The Board found that no parties appeared in support of or in opposition to the Application.
17. 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 as it is a small, corner lot consisting of only 5,000 square feet. The size of the lot has created a small building envelope which is exacerbated by the corner setback requirements. The Applicant previously obtained variances for a dwelling, which was subsequently placed on the Property. The Applicant seeks to replace this dwelling with a new home that will encroach less in the setback areas. Even though the Property is small, if the Property was not a corner lot, only a front yard variance would be needed. The exceptional practical difficulty was created by the small size of the lot and its proximity to an intersection of two streets which limits the buildable area of the lot.
  - b. Due to the uniqueness of the lot, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property is quite small and the building envelope is very limited. The Applicant seeks to replace an existing home which encroaches into the setback area with a home that will encroach less into the setback area. The Applicant has worked with a designer to minimize the encroachments into the setback areas but she was unable to build a reasonably sized home that would fit within the building envelope. It is clear to the Board that, due to the small size of the lot, the variances are necessary to enable reasonable use of the Property as a reasonably sized home with reasonable access thereto cannot be placed on the Property without a variance. The Board is convinced that the shape and location of the dwelling, steps, and porches are reasonable, which is confirmed when reviewing the survey provided by the Applicant.
  - c. The exceptional practical difficulty was not created by the Applicant. The Applicant did not create the small size of the lot and the small building envelope. These conditions have greatly limited the Applicant's ability to place a home on the Property in compliance with the Sussex County Zoning Code.
  - 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. No complaints were noted in the record about the location of the previous home which encroaches farther into the setback areas than the existing home and 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. Rather, the Board received letters from neighbors supporting the requests. The Board also notes that the encroachments into the side yard setback areas for these structures are quite small. The encroachments into the front and corner side yard setbacks are also unlikely to be noticed due to the difference between the edge of paving and the property lines.

- 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 Applicant has demonstrated that the variances sought will allow the Applicant to construct a reasonably sized dwelling, steps, and porches on the Property. The Board is convinced that the Applicant took steps to minimize the encroachments into the setback areas by meeting with a designer and exploring all reasonable options.

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 April 4, 2017.