

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: MARK FOX & THUONG FOX

(Case No. 12019)

A hearing was held after due notice on September 11, 2017. The Board members present were: Mr. Dale Callaway, Ms. Ellen Magee, 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 are seeking a variance of 24.8 feet from the 40 feet front yard setback requirement for a proposed dwelling. This application pertains to certain real property located on the west side of South Bayshore Drive (SCR 16A), approximately 3,320 feet south of Broadkill Road (Route 16) (911 Address: 1407 South Bayshore Drive, Milton); said property being identified as Sussex County Tax Map Parcel Number 2-35-10.06-5.00.

1. The Board was given copies of the Application, a survey dated June 30, 2017, and a portion of the tax map.
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 Mark Fox was sworn in to testify about the Application.
4. The Board found that Mr. Fox testified that the Property is unique because the buildable area for the Property measures only 50 feet by 100 feet. Federal wetlands cover approximately 66% of the rear of the Property.
5. The Board found that Mr. Fox testified that the Applicants purchased a lot where the existing mobile home is located (Lot 4) and they later purchased the rear of the Property where the wetlands are located (Lot 5).
6. The Board found that Mr. Fox testified that the need for the variance was not created by the Applicants.
7. The Board found that Mr. Fox testified that the home could not be constructed on the lot to meet the setback requirements without encroaching onto the wetlands areas.
8. The Board found that Mr. Fox testified that the variance will not alter the essential character of the neighborhood.
9. The Board found that Mr. Fox testified that the existing structure is a singlewide manufactured home with an addition to the rear. The existing structure was constructed in the 1970s.
10. The Board found that Mr. Fox testified that the proposed home will be more in character with the other homes in the neighborhood and will improve property values.
11. The Board found that Mr. Fox testified that the proposed home will be 15 feet from the front property line.
12. The Board found that Mr. Fox testified that the Property is subject to flooding and the proposed dwelling will be elevated on pilings.
13. The Board found no parties appeared in support of or in opposition to this Application.
14. 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 has an exceptionally small building envelope. This small building envelope is due to the fact that a significant portion of the Property is considered wetlands and is unbuildable. Consequently, the Applicants has limited area where they could place a dwelling. It is clear to the Board that the lot's unique characteristics have created an exceptional practical difficulty for the Applicants who seek to build a reasonably sized dwelling on the lot. The Property is also subject to flooding so the home must be elevated thereby further complicating the development 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 location of the wetlands greatly limits the buildable area of the Property and the dwelling cannot be placed on the lot to fit in compliance with the Code. The Applicants seek to construct a reasonably sized dwelling but are unable to do so without violating the Sussex County Zoning Code. 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 build a reasonably sized dwelling on the Property. The Board is convinced that the shape and location of the dwelling are also reasonable, which is confirmed when reviewing the survey provided by the Applicants. The Board notes that the existing home is located a similar distance from South Bay Shore Drive as the proposed home.
- c. The exceptional practical difficulty was not created by the Applicants. The Applicants did not create the wetlands which greatly limit the buildable area of the lot. It is clear to the Board that these unique physical conditions greatly limit the buildable area of the Property and have created an exceptional practical difficulty for the Applicants. The difficulty has not been self-created.
- 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 have no effect on the character of the neighborhood. The dwelling is a reasonably sized dwelling and will be located a similar distance from South Bay Shore Drive as the existing dwelling. Notably, no one appeared in opposition to the request, which is telling since the home will be in a similar location to the existing home. If someone believed that the home affected the character of the neighborhood, the Board would have expected some evidence to that effect. The Board also notes that the edge of paving of South Bay Shore Drive does not match the front property line of the Property so the front yard encroachment is not as large as it initially appears. Ultimately, the Board was not convinced that the variance would somehow alter the essential character of the neighborhood or be detrimental to the public welfare.
- e. The variance sought is the minimum variance necessary to afford relief and the variance requested represent the least modification possible of the regulation at issue. The Applicants have demonstrated that the variance sought will allow the Applicants to build the proposed dwelling on the Property. The Board finds that the dwelling is a reasonable size and shape and that the Applicants have attempted to minimize its intrusion into the setback area.

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, Ms. Ellen Magee, 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 November 2, 2017.