

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: TERRY UPSHER

(Case No. 12119)

A hearing was held after due notice on April 9, 2018. The Board members present were: Mr. Dale Callaway, Ms. Ellen Magee, Mr. Bruce Mears, Mr. John Mills, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for variances from the front yard and side yard setback requirements on a through lot.

Findings of Fact

The Board found that the Applicant is seeking a variance of 1.2 feet from the forty (40) feet front yard setback requirement for a proposed dwelling, a variance of 6.0 feet from the ten (10) feet side yard setback requirement on the east side for a proposed dwelling, a variance of 9.1 feet from the ten (10) feet side yard setback requirement on the east side for a proposed HVAC system, and a variance of 9.9 feet from the ten (10) feet side yard setback requirement on the east side for proposed steps. This application pertains to certain real property located on the south side of Fisher Road. (911 Address 28324 Fisher Road, Milton); said property being identified as Sussex County Tax Map Parcel Number 3-34-10.00-98.00.

1. The Board was given copies of the Application, an aerial photograph of the Property, a survey of the Property dated November 30, 2017, and a portion of the tax map of the area.
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 Gil Fleming, Wileen Upsher, and Terry Upsher were sworn in to testify about the Application.
4. The Board found that Mr. Fleming testified that the Property is a through lot adjacent to Fisher Road and West Springfield Drive.
5. The Board found that Mr. Fleming testified that the Applicants are replacing a 1980s singlewide manufactured home with a doublewide manufactured home. The Applicants wish to upgrade their home to allow for more living space. The proposed dwelling measures 28 feet wide by 56 feet long.
6. The Board found that Mr. Fleming testified that the septic system is already installed on the Property and was used for the prior dwelling.
7. The Board found that Mr. Fleming testified that the Property is unique because it is a through lot.
8. The Board found that Mr. Fleming testified that the Property cannot be developed in strict conformity with the Sussex County Zoning Code.
9. The Board found that Mr. Fleming testified that the exceptional practical difficulty was not created by the Applicants because the Property is a through lot and the location of the septic system presents problems.
10. The Board found that Mr. Fleming testified that the requests will not alter the essential character of the neighborhood and there are other variances in the area.
11. The Board found that Mr. Fleming testified that the requests are the minimum variances necessary to afford relief.
12. The Board found that Mr. Upsher testified that he spoke with his neighbors and they do not object to the Application.
13. The Board found that Mr. Upsher testified that the new doublewide home is an upgrade from the existing singlewide home.

14. The Board found that Mr. Upsher testified that the septic system was approved for the placement of the new manufactured home within tolerance with the doublewide home.
15. The Board found that Mr. Fleming testified that the proposed dwelling will be on a permanent, mobile home foundation.
16. The Board found that Janelle Cornwell, Planning & Zoning Director, stated that DNREC typically requires a separation distance of 10 feet from the septic system and a dwelling and that DNREC will sometimes grant a waiver to reduce that separation distance to 5 feet but she rarely sees waivers allowing for a separation distance of less than 5 feet.
17. The Board found that Mr. Fleming testified that the septic system drain field is closer to West Springside Drive.
18. The Board found that Mr. Fleming testified that there were no other options to place the home elsewhere on the lot and there was no way to turn the house perpendicular without the need for multiple variances.
19. The Board found that Mr. Fleming testified that the house is designed with a front door on the west side of the dwelling and a rear door to the side yard on the east side.
20. The Board found that Mr. Upsher testified that his fence is on the neighboring property to the east and he maintains the area between the side property line and the fence.
21. The Board found that Mr. Upsher testified that the Property is accessed from a driveway off Fisher Road and that there is no access to West Springside Drive.
22. The Board found that one (1) party 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 is unique as it is a through lot and is improved by a septic system in the approximate center of the lot. These unique characteristics greatly limit the buildable area available to the Applicants and have created an exceptional practical difficulty for the Applicants who seek to improve the Property with a reasonably sized doublewide home and related structures.
 - 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 and limited buildable area due to the location of the septic system and since the Property is a through lot. The Applicants seek to place a reasonably sized doublewide home 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 doublewide home with steps and an HVAC system to be placed on the lot. The Board is convinced that the shape and location of these structures are also reasonable, which is confirmed when reviewing the survey provided by the Applicants.
 - c. The exceptional practical difficulty was not created by the Applicants. The location of the septic system in the approximate center of the lot and the through lot setback requirements have resulted in a limited building envelope on the Property. The small building envelope has created the exceptional practical difficulty. The unique characteristics of the Property are clear when reviewing the survey. The Board is convinced that the exceptional practical difficulty was not created by the Applicants but was created the lot's unique characteristics.

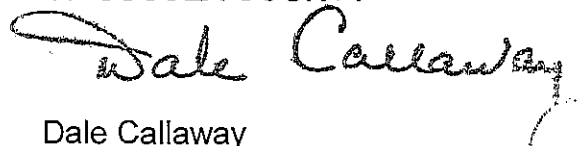
- d. The variances will not alter the essential character of the neighborhood nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare. The Board is convinced that the structures will have no effect on the character of the neighborhood. The dwelling will be placed in a similar location to the prior home on the lot and the Applicant's neighbor indicated to him support of the Application. No evidence was presented that the variances would somehow alter the essential character of the neighborhood. The Board also notes that the edge of paving of Fisher Street does not match the front property line thereby giving the impression that the front yard is larger than it actually is. Likewise, the east side of the Property appears larger because the existing fence is several feet off the side property line.
- 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 place the proposed doublewide home, steps, and HVAC system on the lot. The Board is convinced that the Applicants have taken reasonable measures to reduce encroachments into the setback areas but was significantly constrained by the location of the septic system and the through lot setback requirements.

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. Bruce Mears, Mr. John Mills, 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 two (2) years from the date below the application becomes void.

Date May 22, 2018