

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

**IN RE: CONSTANCE FISHER AS TRUSTEE OF THE**

**WILLIAM W. FISHER TRUST**

**(Case No. 12228)**

A hearing was held after due notice on November 19, 2018. The Board members present were: Mr. Dale Callaway, 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 for an existing structure.

Findings of Fact

The Board found that the Applicant is seeking a variance of 7.2 feet from the ten (10) feet side yard setback requirement on the southeast side for existing steps and a variance of ten (10) feet from the forty (40) feet front yard setback requirement for an existing dwelling and deck. This application pertains to certain real property on the east side of South Bayshore Drive, approximately 0.32 miles south of Marlin Drive (911 Address: 2416 South Bayshore Drive, Milton) said property being identified as Sussex County Tax Map Parcel Number 2-35-10.10-10.00.

1. The Board was given copies of the Application, an aerial photograph of the Property, a certificate of compliance, a building permit application, assessment information, a survey of the Property dated July 19, 2018, and a portion of the tax map of the area.
2. The Board notes that the Property is adjacent to an accessway to the southeast. This accessway is an unimproved pathway to the beach and is not a street. As such, the corner front yard setback requirement does not apply to this lot.
3. The Board found that the Office of Planning & Zoning received no correspondence in support of or in opposition to the Application.
4. The Board found that Constance Fisher was sworn in to testify about the Application. Ms. Fisher is the previous owner of the Property. Ross Karsnitz, Esquire appeared on behalf of the Applicant and he submitted exhibits to the Board to review.
5. The Board found that Mr. Karsnitz stated that the dwelling was built in 1986 and the steps and deck were constructed in 1988 but no permit was issued for the builder.
6. The Board found that Mr. Karsnitz stated that Bayshore Drive was a private road and the front yard setback requirement was 30 feet when the dwelling was constructed. The building permit also acknowledges that the setback requirement was only 30 feet at that time. Since the dwelling was constructed, Bayshore Drive has been converted to a county road and the front yard setback requirement is now 40 feet.
7. The Board found that Mr. Karsnitz stated that the steps will not encroach into the accessway to the beach. The accessway is currently overgrown.
8. The Board found that Mr. Karsnitz stated that DNREC has approved the deck and steps.
9. The Board found that Mr. Karsnitz stated that the Property is unique because the front yard setback was changed when Bayshore Drive became a county road. The Property is also unique due to the odd shape and the fact that it has the accessway just to the south of the lot.

10. The Board found that Mr. Karsnitz stated that the Property cannot otherwise be developed without moving the steps or moving the home which would be a significant cost to the Applicant.
11. The Board found that Mr. Karsnitz stated that the exceptional practical difficulty was not created by the Applicant as she had no control over the change in the front yard setbacks and she relied on her builder to follow setback requirements when the deck and steps were built.
12. The Board found that Mr. Karsnitz stated that the variances will not alter the essential character of the neighborhood as the steps have been in existence since 1988 and the steps are a sufficient distance from other properties. Furthermore, the use of the Property is consistent with other uses in the neighborhood.
13. The Board found that Mr. Karsnitz stated that the variances requested are minimum variances necessary to afford relief. The Applicant does not propose to increase the size of these structures.
14. The Board found that Ms. Fisher affirmed the statements made by Mr. Karsnitz as true and correct. Ms. Fisher testified that she has received no complaints from neighbors.
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 for the variances met the standards for granting a variance. The findings below further support the Board's decision to approve the Application for the variances for those structures.
  - a. The Property is unique due to its size and shape. The Property, though consisting of 2 lots, only consists of 10,005 square feet. If the lot were only a few square feet smaller, it would qualify as an undersized lot with reduced setback requirements. A portion of the Property is also subject to DNREC building line restrictions. These are unique conditions which limit the building envelope of the Property. The lot is also unique because it was originally developed when Bayshore Drive was a private road and the front yard setback requirements were 30 feet. Bayshore Drive has since been converted to a county road and the setback requirements were increased as a result. These unique characteristics of this Property limit the buildable area available to the Applicant and have created an exceptional practical difficulty for the Applicant who seeks to retain existing structures on 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 has a unique size and the buildable area thereof is limited due to its size, shape, and physical conditions. The Applicant seeks to retain existing structures on the lot but is 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 reasonably sized, existing structures to remain 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 Applicant.
  - c. The exceptional practical difficulty was not created by the Applicant. The Applicant did not create the unusual size, shape, and physical conditions of the Property. These conditions have resulted in a limited building envelope on the Property and the small building envelope has created the exceptional practical difficulty. The difficulty caused by the small size of the lot is exacerbated due to the fact that a portion of the lot is located within the DNREC building restriction area. 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 Applicant but was created by the lot's unique characteristics. The Board also notes that the structures were placed on the lot over 30 years ago and the Applicant relied on a builder to place those structures in compliance with the Code only to later discover the encroachments.

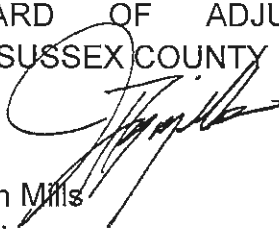
- d. The variances will not alter the essential character of the neighborhood nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare. The Board is convinced that the structures will have no effect on the character of the neighborhood. These structures have been on the Property for quite some time without noted complaints in the record. No evidence was presented that the variances would somehow alter the essential character of the neighborhood. The lack of evidence is telling since, if the structures had somehow altered the essential character of the neighborhood, the Board would expect some evidence thereof. The Board also notes that the variance for the steps is likely unnoticeable since the Property is adjacent to an overgrown accessway that appears to be rarely used. Likewise, the front yard encroachment is likely unnoticeable because there is a significant gap between the edge of paving of Bayshore Drive and the front 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 Applicant has demonstrated that the variances sought will allow the Applicant to retain existing structures. No additions or modifications to the structures are proposed.

The Board approved 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 of the motion to approve were Mr. Dale Callaway, Mr. Bruce Mears, Mr. John Mills, and Mr. Brent Workman. No Board Member voted against the Motion to approve the variance application. Ms. Magee did not participate in the discussion or vote on this application.

BOARD OF ADJUSTMENT  
OF SUSSEX COUNTY



John Mills  
Chairman

If the use is not established within two (2) years from the date below the application becomes void.

Date January 29, 2019.