

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: MARGARET AYERS

(Case No. 12285)

A hearing was held after due notice on June 17, 2019. The Board members present were: Mr. Dale Callaway, Ms. Ellen Magee, Mr. John Mills, Mr. John Williamson, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for a variance from the front yard setback requirement for a proposed dwelling.

Findings of Fact

The Board found that the Applicant is requesting a variance of 3.4 feet from the forty (40) feet front yard setback requirement from Fisher Road for a proposed manufactured home . This application pertains to certain real property located on a through lot fronting on West Springside Drive and Fisher Road approximately 0.21 miles west of Martin Farm Road (911 Address: 28354 West Springside Drive Milton); said property being identified as Sussex County Tax Map Parcel Number 3-34-10.00-102.00.

1. The Board was given copies of the Application, a survey of the Property dated March 4, 2019, a drawing of the Property, an aerial photograph of the Property, 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 the Application or in opposition to the Application.
3. The Board found that Amber Ayers was sworn in to give testimony about the Application.
4. The Board found that Ms. Ayers testified that the lot is unique as it is considered to be a through lot with two front yard setbacks.
5. The Board found that Ms. Ayers testified that the Applicant intended to place the manufactured home in the same footprint as the previous manufactured home but the new home is longer and encroaches into the setbacks. The new home measures 66 feet long and the previous home measured 60 feet long. The new home is only 14 feet wide.
6. The Board found that Ms. Ayers testified that the Property cannot otherwise be developed for a three-bedroom, one bathroom home without this variance.
7. The Board found that Ms. Ayers testified that the exceptional practical difficulty was not created by the Applicant as she purchased the Property "as is".
8. The Board found that Ms. Ayers testified that she is unable to place the home back on the lot as it is a through lot and would still have an encroachment into setback area.
9. The Board found that Ms. Ayers testified that the septic is located to the rear of the home.
10. The Board found that Ms. Ayers testified that the manufactured home is a singlewide home in good shape and will be improved after being installed on the lot. According to Ms. Ayers, the home will be of the same quality as other homes in the neighborhood.
11. The Board found that Ms. Ayers testified that the existing manufactured home has been removed from the Property.

12. The Board found that Ms. Ayers testified that the new singlewide manufactured home will not alter the essential character of the neighborhood as it is similar to current homes in the area.
13. The Board found that Ms. Ayers testified that the variance requested is the minimum variance request due to the driveway and septic placement on the Property and that a variance would be necessary even if the home was turned.
14. The Board found that Ms. Ayers testified that there is a gap between the edge of paving of Fisher Road and the front property line.
15. The Board found that no one 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 a variance 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 because it is a through lot and due to its historical use and building envelope. The lot consists of only 10,003 square feet and would be considered an undersized lot if it were only 4 square feet smaller. While the lot has a standard lot size, the building envelope is limited due to the fact that the Property borders two roads and is considered a through lot. The Property was previously improved by a singlewide manufactured home which needed to be replaced and the new home will be located in a similar footprint as the prior home. The new home is a narrow home measuring only 14 feet wide but is slightly longer than the prior home. The lot is only 75 feet wide so the home could not be turned 180 degrees to fit on the lot without encroaching into the side yard setback areas. The 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 place a dwelling 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 condition and the buildable area thereof is limited due to these conditions. The Applicant seeks to place a dwelling on the lot but is unable to do so without violating the Sussex County Zoning Code. The Board is convinced that a front yard variance is necessary to enable the reasonable use of the Property as the variance will allow a reasonably sized dwelling to be placed on the lot. 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 Applicant.
 - c. The exceptional practical difficulty was not created by the Applicant. The Applicant did not create the unusual conditions of the Property. The lot was developed by a prior owner and the Applicant seeks to replace a singlewide on the home. The Applicant did not create the through lot condition. The preexisting conditions have resulted in a limited building envelope on the Property and 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 Applicant but was created by the lot's unique characteristics.
 - 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 proposed dwelling will have no effect on the character of the neighborhood. The dwelling will replace an older singlewide home in a

similar location and the dwelling should be an improvement to the Property and the neighborhood. Unrebutted evidence demonstrates that the home is similar to others in the neighborhood and no evidence was presented that the variance would somehow alter the essential character of the neighborhood or be detrimental to the public welfare. The Board also notes that there is a gap between the edge of paving of Fisher Road and the front property line thereby making the front of the lot appear larger than it actually is.

- e. The variance sought is the minimum variance necessary to afford relief and the variance requested represents the least modification possible of the regulation at issue. The Applicant has demonstrated that the variance sought will allow the Applicant to place a singlewide manufactured home on the Property. The Applicant is significantly constrained by the uniqueness of the lot and the Board is convinced that the size of the home is reasonable. The Board also notes that the Applicant testified that the home is only 14 feet wide and it is rare to find homes that wide. The unavailability of homes of that width likely limited the Applicant's options to otherwise comply with the zoning ordinance.

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 of the Motion to approve were Mr. Dale Callaway, Ms. Ellen Magee, Mr. John Mills, Mr. John Williamson, and Mr. Brent Workman. No Board Member voted against the Motion to approve the variance application.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY



Ellen M. Magee
Chair

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

Date August 6, 2019.