

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: TERESA FISHER

(Case No. 12640)

A hearing was held after due notice on December 20, 2021. The Board members present were: Dr. Kevin Carson, Mr. Jeff Chorman, Mr. John T. Hastings, Mr. Jordan Warfel, and Mr. John Williamson.

Nature of the Proceedings

This is an application for a variance from the minimum lot width requirement for a proposed lot.

Findings of Fact

The Board found that the Applicant is requesting a variance from 10.88 feet from the 150 foot lot width requirement for a proposed lot. The proposed lot is identified as "Proposed Lot 1" on a minor subdivision survey plan dated December 16, 2021. This application pertains to certain real property located at the west side of Clendaniel Pond Road at the intersection of Clendaniel Pond Road and Pine Street (911 Address: 9342 Clendaniel Pond Road, Lincoln); said property being identified as Sussex County Tax Map Parcel Number 230-13.00-113.00 ("the Property"). After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a portion of the tax map of the area, an aerial photograph of the Property, correspondence in opposition to the Application, a minor subdivision survey plan dated October 26, 2021, and a revised minor subdivision survey plan dated December 16, 2021
2. The Board found that the Office of Planning & Zoning received no correspondence in support of and one letter in opposition to the Application.
3. The Board found that Teresa Fischer and Douglas Annand were sworn in to testify about the Application. Mr. Annand is the Applicant's surveyor.
4. The Board found that Mr. Annand testified that Ms. Fisher inherited the Property, which consists of 3.27 acres from her uncle.
5. The Board found that Mr. Annand testified that Ms. Fisher is currently renovating the dwelling on the Property for her own use and would like to subdivide a lot off the Property for her daughter and grandchildren. The proposed lot will measure 0.772 acres.
6. The Board found that Mr. Annand testified that, although there is sufficient frontage on Pine Street for the new lot, Pine Street cannot be used as it is owned privately. He noted that all the road frontage must come from Clendaniel Pond Road.
7. The Board found that Mr. Annand testified that the variance requested is the minimum variance necessary.
8. The Board found that Mr. Annand testified that DNREC has approved the proposed lot for a septic system. The lots will be served by well water.
9. The Board found that Mr. Annand testified that there is a letter of opposition from a resident who lives on Water Street approximately ¼ mile from the Property and that the opposition is to development of wetlands that run along Water Street.
10. The Board found that Mr. Annand testified that there are wooded wetlands on the Property and some of those wetlands will be part of the new lot but that the wooded wetlands will not be disturbed.
11. The Board found that Mr. Annand testified that the proposed dwelling will be located in the existing open space.
12. The Board found that Mr. Annand testified that the creation of this new lot will not alter the essential character of the neighborhood as there are seven lots on Water

Street and six lots on Pine Street which are non-conforming and are well below the 150 feet minimum lot width requirement.

13. The Board found that Ms. Fisher testified that her uncle gave her the Property and she would like to be able to help her daughter and grandchildren own their own home. She also noted that having her daughter next door she will be able to help her daughter with childcare and as she, herself gets older her daughter will be able to help her.
14. The Board found that Ms. Fisher testified that the variance is needed because she cannot use the frontage from Pine Street but, if she could use the frontage from Pine Street, a variance would not be needed.
15. The Board found that Ms. Fisher testified that it is unclear who owns Pine Street.
16. The Board found that Ms. Fisher testified that there is support from the closest neighbors.
17. The Board found that Ms. Fisher testified that the lot lines were drawn to gain as much of the 150 feet road frontage as possible and to accommodate both septic systems. She preferred a straight lot line but the septic systems dictated that the line be angled as shown on the proposed subdivision survey plan.
18. The Board found that Mr. Annand testified that the house will be closer to the front yard with the septic in the rear yard and that the house will not encroach into the woods.
19. The Board found that Patricia Denison was sworn in by teleconference to give testimony in opposition to the Application. Ms. Denison largely recited her letter in opposition to the Application.
20. The Board found that Ms. Denison testified that she opposed the variance request as the property is mostly wooded wetlands which provides habitat for wildlife and the additional lot would negatively affect the wooded wetlands.
21. The Board found that Ms. Denison testified that she owns a lot that is 103.5 feet wide and an adjacent 50 foot wide lot.
22. The Board found that Ms. Denison testified that the lot size proposed by the Applicant would be smaller than those in the neighborhood.
23. The Board found that Ms. Denison testified that the variance will alter the essential character of the neighborhood.
24. The Board found that Ms. Denison testified that the creation of the new lot will increase density and negatively affect traffic, safety, health, and welfare of the community.
25. The Board found that Ms. Denison testified that allowing lots under the required 150 feet will set a precedent for future requests.
26. The Board found that Ms. Denison testified that the Applicant could expand the existing dwelling to accommodate her family.
27. The Board found that no one appeared in support of and one person appeared in opposition to the Application.
28. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, which the Board weighed and considered, 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 due to its size, shape, wetlands, and historical development. While the Property is large and easily has enough acreage to be subdivided into 2 lots, the Property is improved by a house and septic system near the center of the lot along Clendaniel Pond Road. Moreover, much of the larger parcel consists of wooded lands and wetlands. There is existing open space along Clendaniel Pond Road which could accommodate another lot and the lot would not need a variance if Pine Street was available to be used for frontage. Since Pine Street is a private

road, however, it cannot be used for frontage for consideration in a subdivision. Accordingly, the Applicant is unable to create this proposed lot while meeting the road frontage requirements. These conditions have created an unnecessary hardship and exceptional practical difficulty for the Applicant who seeks to reasonably subdivide the Property.

- b. The unnecessary hardship and exceptional practical difficulty are not being created by the provisions of the Sussex County Zoning Code.
- c. Due to the uniqueness of the Property and the situation, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Applicant seeks to reasonably subdivide the Property but is unable to do while complying with the Sussex County Zoning Code. The Board is thus convinced that the variance is necessary to enable the reasonable use of the Property as the variance will allow the Applicant to reasonably subdivide the Property. The Board is convinced that the size, shape, and location of the proposed lot is reasonable. The Board notes that the resulting two lots will meet the lot size requirements and the newly created lot will have significant frontage on Pine Street as well.
- d. The unnecessary hardship and exceptional practical difficulty were not created by the Applicant. As discussed above, the Property has unique conditions which have limited the Applicant's ability to reasonably subdivide the Property. The Applicant did not create the unique conditions of the lot since the Applicant only recently acquired the Property through inheritance. The Board was convinced that the Applicant did not create the exceptional practical difficulty and unnecessary hardship. Furthermore, the Board is convinced that the Applicant did not come to the Property with an illegal use in mind. Rather, the Applicant is limited by the physical conditions of the Property and needs the variance to reasonably subdivide the Property as proposed. The Board also notes that the existing septic system limited the ability of the Applicant to draw a lot line that would comply with the Code.
- e. 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 proposed subdivision will have no effect on the character of the neighborhood. The proposed subdivision will result in the creation of 2 lots that will meet the lot size requirements and will front on Clendaniel Pond Road. There is a significant portion of the newly created lot that is cleared and available for a dwelling and septic system. The opposition presented concerns about the effect on the wetlands but the record is clear that the wetlands will not be disturbed. The opposition also expressed concerns about the impact on the neighborhood and the precedent but the opposition also admitted that her own lots failed to meet the lot width requirement. A view of the tax map shows that other lots nearby also have similar lot widths. Ultimately, the Board was not convinced by substantial evidence that the variance would somehow alter the essential character of the neighborhood or be detrimental to the public welfare.
- f. 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 reasonably subdivide the Property into two lots. The Applicant is subdividing the Property in a manner that will only require a variance for one lot and the Applicant was constrained by the existing conditions of the Property.
- g. The condition or situation of the Property and the intended use of the Property is not of so general or recurring a nature as to make reasonably

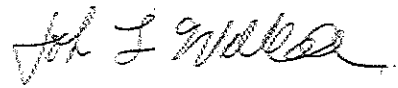
practicable the formulation of a general regulation to be adopted as an amendment to the Sussex County Zoning Code.

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 Dr. Kevin Carson, Mr. Jeffrey Chorman, Mr. Travis Hasting, Mr. Jordan Warfel, and Mr. John Williamson. No Board Members voted against the Motion to approve the variance application.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY



John Williamson
Chair

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

Date February 21, 2022.