

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: JOSEPH DONOVAN & TINA DONOVAN

(Case No. 12064)

A hearing was held after due notice on December 11, 2017. 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 a variance from the front yard setback requirement.

Findings of Fact

The Board found that the Applicants are seeking a variance of 1.7 feet from the thirty (30) feet front yard setback requirement for an existing dwelling. This application pertains to certain real property located on the south side of Bryan Drive, in the rear of the Midway Estates subdivision off Coastal Highway (Route 1) (911 Address: 82 Bryan Drive, Rehoboth Beach); said property being identified as Sussex County Tax Map Parcel Number 3-34-6.00-305.00.

1. The Board was given copies of the Application, a Certificate of Compliance, pictures, a survey of the Property dated August 22, 2017, 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 or in opposition to the Application.
3. The Board found that Joe Donovan and Donald Crowl were sworn in to testify about the Application. Veronica Faust, Esquire, presented the case on behalf of the Applicants.
4. The Board found that Ms. Faust stated that the Property is identified as Lot 104 in Midway Estates, which is an older development located behind the Midway Theater.
5. The Board found that Ms. Faust stated that the dwelling was built in 2014 and a Certificate of Occupancy was issued. The Applicants were unaware of the encroachment at that time.
6. The Board found that Ms. Faust stated that the Applicants entered into a contract to sell the Property to Mr. Crowl and a survey obtained by Mr. Crowl showed the encroachment.
7. The Board found that Ms. Faust stated that the dwelling is 45 feet from the edge of paving of Bryan Drive, which is road measuring 19 feet wide. The right-of-way of Bryan Drive, however, is 50 feet wide.
8. The Board found that Ms. Faust stated that the Property is zoned Medium Residential.
9. The Board found that Ms. Faust stated that the dwelling encroaches into the front yard setback by 1.7 feet.
10. The Board found that Ms. Faust stated that the Property is located partially on a curve which makes the Property unique.
11. The Board found that Ms. Faust stated that Mr. Donovan retained a mason to lay the foundation and he believes that the mason measured from the edge of pavement.
12. The Board found that Ms. Faust stated that it is difficult to tell from the naked eye that the home is in the violation of the front yard setback requirement.
13. The Board found that Ms. Faust stated that the Applicants have received no complaints about the encroachment.
14. The Board found that Ms. Faust stated that it would be impractical to move the home.

15. The Board found that Ms. Faust stated that the dwelling appears to be in line with the neighboring houses and the variance will not alter the essential character of the neighborhood.
16. The Board found that Ms. Faust stated that the variance requested is the minimum variance necessary to afford relief.
17. The Board found that Mr. Donovan affirmed the statements made by Ms. Faust as true and correct.
18. The Board found that Mr. Donovan testified that his neighbors have expressed no concerns about the variance.
19. The Board found that Mr. Crowl testified that he is purchasing the Property. He has had 3-5 conversations with the neighbors and the neighbors have had no issues with the encroachment and have been complimentary of the house.
20. The Board found that Mr. Donovan testified that only a portion of the house encroaches into the setback area. The portion of the house which encroaches into the setback area is the attached garage.
21. The Board found that no parties appeared in support of or in opposition to the Application
22. 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 narrow lot and the edge of paving of Bryan Drive does not match the front property line. This discrepancy gives the false impression that the Property is larger than it actually is and that the building envelope is also larger. The unique characteristics of the Property have created an exceptional practical difficulty. The situation is also unique because the Applicants had the site inspected by Sussex County officials and the Applicants received a Certificate of Compliance after the home was constructed. Notably, only a small portion of the home encroaches into the front yard setback area. Ultimately, the Board finds that the uniqueness of the Property and the situation have created an exceptional practical difficulty for the Applicant.
 - b. 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 home is a stick-built structure and cannot be moved into compliance with the Code. The Applicants received all necessary approvals and permits for the placement of the home only to later learn that it did not actually meet the Code's requirements. Ultimately, the Applicants seek to retain the home in its existing location 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 a reasonably sized home to remain on the Property. The Board is convinced that the shape and location of the home 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 Applicants reasonably relied on the mason to set the foundation for the home in compliance with the Sussex County Zoning Code. The Applicants reasonably believed that the home complied with the Code only to find out later that the home encroached into the setback area. Likewise, the Applicants relied on the Sussex County Planning & Zoning Office and reasonably believed the home complied with the setback requirements because a Certificate of Compliance was issued after the home was placed. The error by the mason and the issuance of a Certificate of Compliance in

error have created the exceptional practical difficulty for the Applicants and the Board finds that this error was not self-created by the Applicants. Likewise, the small size of the Property and the discrepancy between the edge of paving of Bryan Drive and the front property line have also created an exceptional practical difficulty for the Applicants.

- 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 home will have no effect on the character of the neighborhood. The home has been on the Property in its current location for some time without complaint. Furthermore, no evidence was presented which would indicate that the variance would somehow alter the essential character of the neighborhood or be detrimental to the public welfare. The Board notes that the front property line is a significant distance from the edge of paving of Bryan Drive thereby making the front of the Property appear larger than it actually is. This condition should minimize the impact of the front yard encroachment.
- 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 Applicants have demonstrated that the variance sought will allow the Applicants to retain the home on the Property. No additions or modifications to the home are proposed. Furthermore, the Board notes that only a small portion of the home encroaches 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, Mr. Bruce Mears, Mr. John Mills, and Mr. Brent Workman. No Board Member voted against the Motion to approve the variance application. Ms. Ellen Magee did not participate in the discussion or vote on this 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 February 6, 2018.