

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: STEVEN TAIT & ROBIN TAIT

(Case No. 12073)

A hearing was held after due notice on December 18, 2017. 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.

Findings of Fact

The Board found that the Applicants are seeking a variance of 9.5 feet from the fifteen (15) feet corner front yard setback requirement along Bayshore Drive for a dwelling, a variance of 8.6 feet from the fifteen (15) feet corner front yard setback requirement along Bayshore Drive for a dwelling, a variance of 28.2 feet from the thirty (30) feet front yard setback requirement along Oak Street for a dwelling, a variance of 27.7 feet from the thirty (30) feet front yard setback requirement along Oak Street for a dwelling, a variance of 23.8 feet from the thirty (30) feet front yard setback requirement along Oak Street for a dwelling, a variance of 7.0 feet from the ten (10) feet side yard setback requirement on the west side for a dwelling, and a variance of 8.1 feet from the ten (10) feet side yard setback requirement on the west side for a dwelling. This application pertains to certain real property located on the west side of Shore Drive at the southwest corner of the intersection of Oak Street and Shore Drive (911 Address: 9272 Shore Drive, Milford); said property being identified as Sussex County Tax Map Parcel Number 2-30-17.00-183.00.

1. The Board was given copies of the Application, an aerial photograph of the Property, a survey of the Property dated October 9, 2017, a survey of the Property dated June 29, 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 Mark Redden, who is the Applicants' architect, was sworn in to testify about the Application.
4. The Board found that Mr. Redden testified that the Property is a small, undersized lot. The Property is approximately half the size it is required to be under the Sussex County Zoning Code.
5. The Board found that Mr. Redden testified that the Property is located in the flood plain. The Applicants propose to raise the dwelling above the flood plain. Raising the dwelling will help with the flood insurance rates in the neighborhood.
6. The Board found that Mr. Redden testified that the Property cannot be developed in strict conformity with the Sussex County Zoning Code.
7. The Board found that Mr. Redden testified that the footprint of the house will not change but the house will be three (3) feet taller.
8. The Board found that Mr. Redden testified that the exceptional practical difficulty was not created by the Applicants.
9. The Board found that Mr. Redden testified that the dwelling was built prior to the enactment of the Sussex County Zoning Code.
10. The Board found that Mr. Redden testified that the dwelling has been on the Property for approximately fifty (50) years and was constructed without regard to the setback requirements.
11. The Board found that Mr. Redden testified that the variances will not alter the essential character of the neighborhood.

12. The Board found that Mr. Redden testified that the Applicants propose to renovate the dwelling and it will be more attractive.
13. The Board found that Mr. Redden testified that there will not be parking spaces under the dwelling.
14. The Board found that Mr. Redden testified that the variances requested are the minimum variances necessary to afford relief.
15. The Board found that Mr. Redden testified that the lot will be re-sodded.
16. The Board found that Mr. Redden testified that there is a gap between the edge of paving of Oak Street and Bayshore Drive and the property lines.
17. The Board found that no parties appeared in support of or in opposition to the Application.
18. 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 due to its unique size. The Property is quite small and consists of only 5,000 square feet as evidenced by the survey. The small size of the Property has created a limited building envelope which is further reduced by the corner setback requirements. The Property is also unique because it is located in the flood plain and was originally developed prior to the enactment of the Sussex County Zoning Code. The Applicants propose to raise the home above the flood plain and renovate it within the same footprint but the Applicants cannot do so without a variance. The Board finds that the unique characteristics of this Property have thus limited the buildable area available to the Applicants and have created an exceptional practical difficulty.
 - b. Due to the uniqueness of the Property, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The dwelling was constructed approximately 50 years ago and prior to the enactment of the Sussex County Zoning Code. The Applicants seek to raise the dwelling above the flood plain 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 the existing dwelling to remain on the Property and be raised as proposed. The Board is convinced that the shape and location of the dwelling is 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 did not create the unusual size of the Property. The Property was developed many years ago and was improved with the existing dwelling prior to the enactment of the Sussex County Zoning Code. The unique lot size has 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 difficulty associated with the unique size of the Property is also exacerbated by the fact that the Property is located in a flood plain and needs to be elevated. 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 dwelling has been on the Property for many years without recorded complaints.

Despite the longstanding location of the dwelling and notification to neighbors, no complaints were noted in the record about its location. Furthermore, no evidence was presented which would indicate that the variances would somehow alter the essential character of the neighborhood or be detrimental to the public welfare. The Board also notes that the raising of the dwelling as proposed will likely reduce flood insurance rates in the neighborhood; which should benefit neighboring properties.

- 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 elevate the dwelling on the same footprint above the floodplain. The Applicants do not propose to otherwise add to the dwelling.

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 one (1)
year from the date below the application
becomes void.

Date February 20, 2018.