

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: DONALD MAY and SUSAN MAY

(Case No. 12131)

A hearing was held after due notice on May 7, 2018. The Board members present were: Mr. Dale Callaway, Mr. Bruce Mears, Ms. Ellen Magee, Mr. John Mills, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for a Variance from the front yard setback requirement (Section 115-42 of the Sussex County Zoning Ordinance).

Findings of Fact

The Board found that the Applicant is seeking a variance of 8.5 feet from the thirty (30) feet front yard setback requirement for an existing dwelling on a parcel of land zoned GR, General Residential. The property is identified as Sussex County Tax Map and Parcel Number 3-34-13.00-70.04, with a 911 address of 503 3rd Street, Rehoboth Beach, Delaware.

After the hearing, the Board made the following finding of fact:

1. The Board was given copies of the Application, a survey of the property, and a portion of the tax map of the area.
2. Jennifer Walls of Sussex County, described the case and stated that the Office of Planning and Zoning has not received any correspondence concerning the Application.
3. Agata Picolli and Marcin Szwajnoch were sworn in and testified about the request for an 8.5 foot from the 30 foot front yard setback.
4. The Board found that Agata Picolli and Marcin Szwajnoch are the new owners of the property.
5. The Board found that Agata Picolli and Marcin Szwajnoch testified that the need for the variance is due to the pre-existing location of the home on the property.
6. The Board found that based upon the survey, the encroachment into the front yard setback only occurs on a minor section of the front yard setback line.
7. The Board found that based upon the survey, denying the variance would create the need to remove several feet of the southwest end of the existing house.
8. The Board found that Marcin Szwainoch testified that a shed that encroached upon the site and rear setback lines has been removed from the site and rear yard.
9. The Board found that the applicants indicated that the home is located in its current placement because of the location of the septic area on the lot.
10. The Board found that the applicants stated on the application form that the home was placed in 1989 in its present location following a fire that occurred in the prior home, which was also located in the same area of the property.
11. The Board found that Marcin Szwainoch testified that the need for the variance was learned when they had a survey prepared as part of their purchase of the property, and that the home has existed in its present location for at least 30 years.
12. The Board found that Marcin Szwajnoch testified that it is their belief that the variance is appropriate because the difficulty was not created by them.
13. The Board found that Marcin Szwajnoch testified that it is their belief that the variance will not alter the essential character of the neighborhood or be detrimental to the public welfare.
14. The Board found that Marcin Szwajnoch testified it is their belief that the variance is the minimum to affect relief.
15. The Board found that no parties appeared in support of the Application.
16. The Board found that no parties appeared in opposition of the Application.
17. Based on the findings above and the testimony and evidence presented during the Public Hearing and contained in the Public Record, the Board determined that the Variance application should be approved. The findings below further support the Board's decision to grant the Variance Application:
 - a. The need for the variance has not been created by the Applicant or Agata Picolli and Marcin Szwajnoch, as purchasers of the property.


- b. There was testimony in the record that the variance would not adversely affect the essential character of the neighborhood. The house and its location on the property are similar to the properties in Tru-Vale Acres.
- c. There is an exceptional practical difficulty evident in this case. If the variance is not granted, the applicant and/or Agata Picolli and Marcin Szwajnoch would have to shave off approximately 9 feet of their home.
- d. The home has existed in its current location and configuration for quite some time without notice or objection from neighboring property owners.
- e. The property and the location of the home is unique, in that (a) this is the only available placement of the home due to the existence of the septic area upon the lot; and (b) the home was placed in this location in 1989 following a fire that occurred in the prior home in the same location on the lot.
- f. The exceptional practical difficulty has not been created by the Applicants.
- g. The variance is the minimum necessary to afford relief.

Based on the foregoing, the Board approved the variance from the front yard setback requirement pursuant to Section 115-42 of the Sussex County Zoning Code.

Decision of the Board

Upon motion duly made and seconded, the variance from the front yard setback requirement pursuant to Section 115-42 of the Sussex County Zoning Code was approved. The Board Members in favor of the approval were Mr. Dale Callaway, Mr. Bruce Mears, Ms. Ellen Magee, Mr. John Mills and Mr. Brent Workman.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY


Dale Callaway
Chairman

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

Date July 10, 2018