

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: RICHARD ZIMMERMAN & RHONDA ZIMMERMAN

(Case No. 12132)

A hearing was held after due notice on July 23, 2018. 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 variances from the front yard setback requirement for existing and proposed structures.

Findings of Fact

The Board found that the Applicants are seeking a variance of 1.9 feet from the thirty (30) feet front yard setback requirement for the storage building, a variance of 5.9 feet from the thirty (30) feet front yard setback requirement for the garage, a variance of 4.9 feet from the thirty (30) feet front yard setback requirement for the house, a variance of 10.9 feet from the thirty (30) feet front yard setback requirement for the porch, and a variance of 12.9 feet from the thirty (30) feet front yard setback requirement for the steps. This application pertains to certain real property located on the west side of North Drive, at the end of 2nd Street (911 Address: 301 North Drive, Rehoboth Beach); said property being identified as Sussex County Tax Map Parcel Number 3-34-13.00-61.03.

1. The Board was given copies of the Application, a survey of the Property dated May 16, 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 Richard Zimmerman and Rhonda Zimmerman were sworn in to give testimony. David Hutt, Esquire presented the Application on behalf of the Applicants and submitted exhibit booklets to the Board.
4. The Board found that Mr. Hutt stated that the Applicants purchased the Property in 2017. At that time, the Property was improved by a dwelling, deck, porch, shed, and outdoor tiki bar. The Property is located in Tru-Vale Acres and is improved by a dwelling that is approximately 50 years old. The Applicants intend to replace the home with a new, stick-built dwelling. The other structures on the Property, except the shed, would remain.
5. The Board found that Mr. Hutt stated that the Applicants have worked with their designer to reduce the size of the porch and to attempt to minimize the encroachments into the setback area.
6. The Board found that Mr. Hutt stated that all immediate neighbors support the Application.
7. The Board found that Mr. Hutt stated that this property is unique because when this property was purchased the existing dwelling was constructed too close to the front property line which led to other improvements constructed in the rear yard.
8. The Board found that Mr. Hutt stated that the Property could not be otherwise developed without major changes to the backyard amenities and that the variances are necessary to allow reasonable use of the Property.
9. The Board found that Mr. Hutt stated that it is necessary to replace the dwelling.
10. The Board found that Mr. Hutt stated that the difficulty was not created by the Applicants as the home was already on the Property when they purchased it.
11. The Board found that Mr. Hutt stated that the variances will not affect the essential character of the neighborhood as six (6) neighboring homes have similar variances.

12. The Board found that Mr. Hutt stated that the edge of paving of North Drive is at least 10 feet from the front yard property line. As such, the house will appear to be greater than 30 feet from the front property line and the structures will pose no visibility concerns.
13. The Board found that Mr. Hutt stated that the variances requested are the minimum variances necessary to afford relief.
14. The Board found that Mr. Zimmerman affirmed the statements made by Mr. Hutt as true and correct.
15. The Board found that Denis LaMartino was sworn in to testify in support of the Application. Mr. LaMartino testified that he has lived in Tru-Vale Acres since 1979 and he received a variance to replace his home. He believes that the improvements to the Zimmerman property will add value to all the neighboring homes.
16. The Board found that one (1) person appeared in support of and no parties appeared in opposition to the Application.
17. 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 unrebutted, 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 developed by an existing dwelling, which was placed on the Property by a prior owner, and the dwelling is located near the front property setback line. The dwelling has been on the Property for approximately 50 years and needs to be replaced. The Applicants seek to replace the dwelling but are unable to do so without violating the front yard setback requirement. The Property is also unique because the rear yard is developed by a pool and other structures which are not being replaced. This condition greatly limits the buildable area of the Property; particularly with regard to construction in the rear of the lot. These unique conditions have created an exceptional practical difficulty for the Applicants.
 - b. Due to the uniqueness of the Property, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Applicants seek to replace an existing dwelling 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 dwelling to be replaced as proposed on the Property. The new home will be more compliant with the Code. The Board is convinced that the shape and location of the dwelling are reasonable, which is confirmed when reviewing the survey provided by the Applicants. Based on the survey, there appears no other location where the dwelling could be located.
 - c. The exceptional practical difficulty was not created by the Applicants. There was no evidence that the Applicants created the lot or developed it with the existing dwelling and other structures. Rather, the Property was developed by a prior owner. These conditions have created the exceptional practical difficulty for the Applicants who seek to replace the dwelling. The location of the existing structures on the lot limit their options.
 - 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 Board is convinced that the dwelling will have no effect on the character of the neighborhood. The Applicants propose to replace an older dwelling and the new structure will likely benefit the neighborhood. One neighbor even noted that he believes the improvements will enhance property values in the neighborhood. The new dwelling will also be farther from the front property

line than the existing dwelling thereby reducing the degree of non-conformity. Neighbors have indicated support for the Application and 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 survey indicates a gap between the front property line and the edge of paving of North Street. As such, the encroachments into the front yard setback area are likely less noticeable than if the edge of paving matched the front property line.

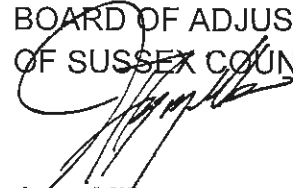
- e. The variances sought are the minimum variances necessary to afford relief and the variances requested represent the least modifications possible of the regulation at issue. The Applicants have demonstrated that the variances sought will allow the Applicants to replace the existing dwelling on the Property. The Board notes that, as part of the construction process, the existing front yard encroachment will be reduced. The Applicants are not able to further reduce that encroachment, however, due to the structures previously located by a prior owner in the rear of the Property. The Board finds that the Applicants have taken steps to reduce the encroachment.

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



John Mills
Chairman

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

Date September 18, 2018.