

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: JAMES K. CLARK and CARLA J. CLARK

(Case No. 11461)

A hearing was held after due notice on October 6, 2014. The Board members present were: Mr. Dale Callaway, Mr. Jeff Hudson, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for variances from the side yard and front yard setback requirements.

Findings of Fact

The Board found that the Applicants were seeking a variance of seven (7) feet from the ten (10) feet side yard setback requirement and a variance of 34.7 feet from the forty (40) feet front yard setback requirement for an existing detached garage, and a variance of 10.7 feet from the forty (40) feet front yard setback requirement for an existing dwelling. This application pertains to certain real property located – southwest of Road 312 (River Road) 0.4 mile east of Road 312A (Layton Davis Road) and being Lot 14 within "Whit's Point on the Indian River" Subdivision (911 Address: 32100 River Road, Millsboro, DE); said property being identified as Sussex County Tax Map Parcel Number 2-34-34.11-39.00. After a hearing, the Board made the following findings of fact:

1. The Board found that the Office of Planning & Zoning received on letter regarding the Application.
2. James Clark was sworn in to testify about the Application and William Schab, Esquire, appeared on behalf of the Applicants.
3. The Board found that Mr. Schab stated that the Applicants purchased the Property in 2012.
4. The Board found that Mr. Schab stated that the Property is long and skinny.
5. The Board found that Mr. Schab stated that the garage is only a few feet from the road and that the setback may have only been ten (10) feet from the road when the garage was constructed.
6. The Board found that Mr. Schab stated that other houses and garages along River Road are situated close to the road.
7. The Board found that Mr. Schab stated that the structures have been in their current location for many years as the structures were placed on the Property in the early 1970s.
8. The Board found that Mr. Schab stated that the variances are necessary to enable reasonable use of the Property.
9. The Board found that Mr. Schab stated that the practical difficulty was not created by the Applicants.
10. The Board found that Mr. Schab stated that the variances will not affect property values in the area.
11. The Board found that Mr. Schab stated that the structures would have to be moved or removed in order to bring the Property into compliance with the Sussex County Zoning Code and that this would be a hardship to the Applicants.
12. The Board found that Mr. Clark testified that he lives on the Property and that the garage is being used and is full.
13. The Board found that Mr. Clark testified that the statements made by Mr. Schab are true and correct.

14. The Board found that Mr. Clark testified that the character of the neighborhood has structures close to the road and consider the waterfront to be their front yards.
15. The Board found that Mr. Clark testified that a neighbor has a garage located two (2) feet from the road and that the houses tend to be located closer to River Road than to the water.
16. The Board found that Mr. Clark testified that the rear yard floods and the Property slopes in the rear yard towards the water.
17. The Board found that Mr. Clark testified that it would difficult to move the garage to the rear yard due to the flooding issues.
18. Charles Kelly was sworn in to testify about the Application.
19. The Board found that Mr. Kelly testified that he has no objection to the variance and that he does not want to see the garage removed.
20. The Board found that three (3) parties appeared in support of the Application.
21. The Board found that no parties appeared in opposition to the Application.
22. Based on the findings above and the testimony presented at the public hearing and the public record, the Board determined that the application met the standards for granting a variance. The Property is unique due to its unusual history of setback requirements and the historical placement of houses and structures in the neighborhood closer to River Road than to Indian River. The Property is also unique due to its small size and due to its proximity to Indian River, which borders the rear of the lot. The variances are necessary to enable reasonable use of the Property. The structures would have to be moved or removed in order to bring the Property into compliance with the Sussex County Zoning Code. Doing so would be a great hardship to the Applicants and is likely not possible due to flooding in the rear yard. The Property also slopes towards Indian River which limits placement of structures in the rear yard. The hardship and exceptional practical difficulty were not created by the Applicants. The structures were placed on the Property by a prior owner. The variances will not alter the essential character of the neighborhood. There are other structures in the neighborhood which are similarly situated and the structures on the Property have been in their current location for many years. The variances sought are the minimum variances necessary to afford relief and the variances requested represent the least modifications of the regulations at issue. The variances are not detrimental to the public welfare.

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. Jeff Hudson, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman. No Board Members 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 December 2, 2014