

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: PHILIP HRUSKA

(Case No. 11547)

A hearing was held after due notice on April 6, 2015. 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 rear yard setback requirement.

Findings of Fact

The Board found that the Applicant was seeking a variance of ten (10) feet from the twenty (20) feet rear yard setback requirement for a proposed detached garage. This application pertains to certain real property located east of Road 352 (Windmill Drive) and being north of Pine Grove Road approximately 1,090 feet east of Road 352 (Windmill Drive) (911 Address: 36451 Pine Grove Lane, Ocean View, DE); said property being identified as Sussex County Tax Map Parcel Number 1-34-12.00-1562.00.

1. The Board was given copies of the Application, a portion of the tax map of the area, and a survey of the Property dated October 30, 2014.
2. The Board found that the Office of Planning & Zoning did not receive any correspondence regarding the Application.
3. The Board found that Philip Hruska was sworn in and testified regarding the Application.
4. The Board found that Mr. Hruska testified that the variance will not alter the properties to the rear of his property. The rear yard is adjacent to a wooded buffer and there is also a trail and a second buffer located between his property and the proposed townhouses being built on the adjacent property to the rear of his lot. There will be approximately three-hundred (300) feet between his detached garage and the townhouses. Mr. Hruska submitted a drawing of the community being built to the rear of his property.
5. The Board found that Mr. Hruska testified that the neighboring development has not yet been constructed.
6. The Board found that Mr. Hruska testified that he has a rear garage attached to his dwelling and that the variance is necessary in order to gain access to the attached garage on his existing dwelling. The attached garage faces the rear of his property.
7. The Board found that Mr. Hruska testified that the Property is a shallow lot which makes it unique.
8. The Board found that Mr. Hruska testified that the Property cannot be developed in strict conformity due to the location of the existing dwelling and attached garage.
9. The Board found that Mr. Hruska testified that the variance will leave enough room to access his existing attached garage.
10. The Board found that Mr. Hruska testified that the difficulty was not created by the Applicant.
11. The Board found that Mr. Hruska testified that the variance will not alter the character of the neighborhood since there are similar detached garages in the area.
12. The Board found that Mr. Hruska testified that the use will not be detrimental to the public welfare.

13. The Board found that Mr. Hruska testified that the variance requested is the minimum variance to afford relief.
14. The Board found that Mr. Hruska testified that the house has already been built and the dwelling was set back on the lot. The placement of the dwelling is consistent with other dwellings in the development.
15. The Board found that Mr. Hruska testified that the attached garage is a rear entry garage and placing the proposed garage in compliance with the Zoning Code would limit his ability to access the attached garage.
16. The Board found that no parties appeared in support of or 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 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 the location of the dwelling and the rear-facing, attached garage. The dwelling is placed 45 feet off the road, which is consistent with the neighborhood, but a significant portion of the rear yard is needed in order to safely access the rear-facing, attached garage. The unique characteristics of this Property have created an exceptional practical difficulty for the Applicant.
 - b. Due to the unique placement of the dwelling and the rear-facing, attached garage, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Applicant seeks the variance to allow for the construction of a reasonably sized detached garage. Without the variance, it would be difficult to safely access the attached garage because there would not be enough space for a car to safely turn. The Board is convinced that the size and location of the detached garage are reasonable. The Board found that the variance is necessary to enable the reasonable use of the Property as the variance will allow the detached garage to be constructed on the Property in such a way as to allow for safe access to the attached garage. The survey attached to the Application confirms that the detached garage is reasonable in size, shape and location.
 - c. The exceptional practical difficulty was not created by the Applicant. The dwelling was placed on the lot in a manner consistent with other homes in the neighborhood but the placement of the dwelling farther off of the road has limited the placement options for the detached garage because placing it in compliance with the Sussex County Zoning Code would limit access to the attached garage. The unique placement of the dwelling is clear when reviewing the survey.
 - 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 un rebutted testimony of Mr. Hruska indicates that the dwelling and detached garage are similar to those structures placed on neighboring properties and that the variance will be consistent with the character of the neighborhood. The Property abuts a wooden buffer between the Pine Grove subdivision and a new development under construction. The variance to the rear yard setback should have no impact on the properties to the rear. 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.

- e. The variance sought is the minimum variance necessary to afford relief and the variance requested represent the least modification possible of the regulation at issue. The Applicant has demonstrated that the variance sought will allow the proposed detached garage to be constructed in its proposed location.

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 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 May 5, 2015