

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: CHARLES HUMPHREYS

(Case No. 11566)

A hearing was held after due notice on May 4, 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 side yard and rear yard setback requirements.

Findings of Fact

The Board found that the Applicant was seeking a variance of 0.6 feet from the five (5) feet side yard setback requirement and a variance of 0.2 feet from the five (5) feet rear yard setback requirement for an existing accessory building (garage). This application pertains to certain real property located north of Road 341 (Falling Point Road) and being west of Lagoon Road, approximately 1,600 feet north of Dogwood Drive and more specifically Lots 71, 72, and 73 within Dogwood Acres Subdivision (911 Address: None Available); said property being identified as Sussex County Tax Map Parcel Number 1-34-6.00-81.00 and 82.00.

1. The Board was given copies of the Application, a portion of the tax map of the area, a survey dated October 16, 2014, and a portion of the Sussex County Zoning Code.
2. The Board found that the Office of Planning & Zoning did not receive any correspondence regarding the Application.
3. Charles Humphreys and Patricia Humphreys were sworn in to testify about the Application. Mr. Humphreys submitted a picture of the Property to the Board to review.
4. The Board found that Mr. Humphreys testified that he purchased Lot 71 in 1997. An existing manufactured home and garage were located on Lot 71 at that time.
5. The Board found that Mr. Humphreys testified that he hired a contractor to remove the garage and to build a new garage on Lot 71 in 2008. Permits were issued for the construction of the new garage but a final inspection was never completed by the contractor.
6. The Board found that Mr. Humphreys testified that he purchased the adjacent Lot 72 and Lot 73 in 2014 and plans to combine the lots into one property and build a dwelling.
7. The Board found that Mr. Humphreys testified that the survey completed to combine the properties showed the encroachments. He was not aware of the encroachments prior to the survey being completed.
8. The Board found that Mr. Humphreys testified that the Property is slightly angled making it unique.
9. The Board found that Mr. Humphreys testified that the garage is on a permanent foundation, has electricity, and cannot be moved into compliance.
10. The Board found that Mr. Humphreys testified that the garage has not altered the character of the neighborhood.
11. The Board found that Mr. Humphreys testified that the neighbors have had no objection to the garage. A neighbor has a stockade fence which blocks the view of the garage.
12. The Board found that Mr. Humphreys testified that the variances are not detrimental to the public welfare.

13. The Board found that Mr. Humphreys testified that the exceptional practical difficulty was not created by the Applicant. He relied on the contractor (Michael Kern) to build the garage in compliance with the Sussex County Zoning Code.
14. The Board found that Mr. Humphreys testified that the variances are the minimum variances necessary to afford relief and that the variances represent the least modifications of the regulations at issue.
15. The Board found that no parties appeared in support of or in opposition to the Application.
16. 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 has a unique angle which is apparent when reviewing the survey attached the Application. The situation is also unique because the Applicant relied on his contractor to construct the garage in compliance with the Sussex County Zoning Code. The Applicant believed that the garage was built in compliance with the Code but a recent survey showed that the garage slightly encroached into the setback areas. The uniqueness of the Property and the contractor's mistake 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 garage was placed on the Property in 2008 and the Applicant believed that his contractor had obtained all necessary approvals. The garage has a concrete foundation and electricity which make it difficult to move. The garage, as shown on the survey and the picture submitted by the Applicant, is of a reasonable size and shape. The Applicant seeks the requested variances in order to leave the existing garage in its present location and no additional variances are requested. The Board is convinced that the variances are necessary to enable the reasonable use of the Property as the variances will allow the garage to remain on the Property in its present location. The Board is convinced that the size, shape and location of the garage are reasonable; which is confirmed when reviewing the survey.
 - c. The exceptional practical difficulty was not created by the Applicant. The garage was placed on the Property in 2008 by the Applicant's contractor and the Applicant believed that all necessary approvals had been obtained. Only recently did the Applicant discover that the garage did not comply with the setback requirements. The garage has been in its present location for many years and the Applicant has received no complaints from neighbors. The Applicant did not place the garage on the Property. As such, it is clear to the Board that the exceptional practical difficulty was not created by the Applicant.
 - 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 garage will not have a negative impact on the neighborhood. The unrebutted testimony indicates that the garage has been in its present location for many years without complaint. The small size of the variances and the existence of the garage in its present location for many years indicate that the variances will have no negative impact on neighboring properties. Rather, since the garage has been its present location for nearly 10 years, it is likely that the garage is part of the

character of the neighborhood and the granting of these variance requests would in no way alter the character of the neighborhood, impair the uses of adjacent properties, or be detrimental to the public welfare. The garage also encroaches into the setback areas by mere inches so it is unlikely that a neighbor would even notice the encroachment. 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.

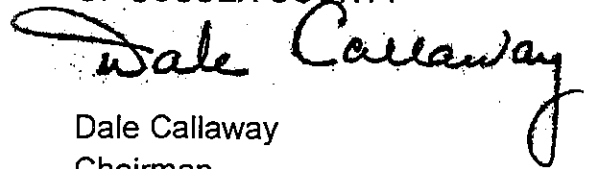
- e. The variances sought are the minimum variances necessary to afford relief and the variances requested represent the least modifications possible of the regulations at issue. The Applicant has demonstrated that the variances sought will allow the existing garage to remain in its present location. No additions to the garage are being proposed which would require an additional variance.

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 June 9, 2015