

**BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY**

**IN RE: ROBERT F. BEST, JR., & KERRI BEST**

**(Case No. 11570)**

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 a variance from the side yard setback requirement.

Findings of Fact

The Board found that the Applicants were seeking a variance of ten (10) feet from the fifteen (15) feet side yard setback requirement for a proposed detached garage. This application pertains to certain real property located northwest of Road 266 (New Road), approximately 0.5 mile southwest of Road 269A (Old Orchard Road) (911 Address: 16732 New Road, Lewes); said property being identified as Sussex County Tax Map Parcel Number 3-35-7.00-7.03.

1. The Board was given copies of the Application, a portion of the tax map of the area, and An undated survey.
2. The Board found that the Office of Planning & Zoning did not receive any correspondence regarding the Application.
3. Kerri Best was sworn in to testify about the Application.
4. The Board found that Ms. Best testified that the Property was originally a fourteen (14) acre parcel owned by her husband's grandfather. The adjacent properties are owned by family members.
5. The Board found that Ms. Best testified that the Applicants seek to construct a garage.
6. The Board found that Ms. Best testified that the Property is large but is uniquely shaped as it has unique angles.
7. The Board found that Ms. Best testified that they did not realize the setback requirements until the building permit for the garage was obtained
8. The Board found that Ms. Best testified that the rear yard is heavily wooded with mature trees which limit the buildable area for the garage. The elimination of the mature trees if the garage were moved farther away from the side property line would affect the character of the neighborhood more than the proposed garage.
9. The Board found that Ms. Best testified that the Property is narrow and the property line is angled towards the rear of the Property.
10. The Board found that Ms. Best testified that the rear corner of the proposed detached garage will encroach the most into the setback area. The front corner of the garage will not encroach as much as the rear portion due to the angling of the lot.
11. The Board found that Ms. Best testified that the proposed location is in line with the existing driveway.
12. The Board found that Ms. Best testified that the variance is necessary to enable reasonable use of the Property.
13. The Board found that Ms. Best testified that the difficulty was not created by the Applicants.
14. The Board found that Ms. Best testified that the variance will not alter the character of the neighborhood.
15. The Board found that Ms. Best testified that the proposed detached garage will match the exterior of the existing dwelling.

16. The Board found that Ms. Best testified that the variance will not impair the development and uses of the neighboring or adjacent properties and the use will not be detrimental to the public welfare.
17. The Board found that Ms. Best testified that the variance is the least modification of the regulation at issue and the variance is the minimum variance to afford relief.
18. The Board found that no parties appeared in support of or in opposition to the Application.
19. 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 due to its narrow width and the unique angle of the side property line. Per the unrebutted testimony of the Applicant, which the Board found credible, the Property also consists of large, mature trees which limit the area where a garage could reasonably be located. The unique shape of the Property is apparent when reviewing the survey and tax map. It is clear that the uniqueness of the Property has 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 build a reasonably sized garage on the Property but are unable to do so due to the unique angle of the Property and the location of mature trees. The proposed garage, as shown on the survey, is of a reasonable size, shape, and location. The Board is convinced that the variance is necessary to enable the reasonable use of the Property.
  - c. The exceptional practical difficulty was not created by the Applicants. The Applicants did not create the unique shape of the Property which has limited the buildable area of the garage. If the side property line were straight, rather than angled, no variance would be needed for the location of the garage. The location of the mature trees has also created an exceptional practical difficulty for the Applicants as it has limited the area where the garage could reasonably be located without major disturbance to the wooded areas. Accordingly, it is clear to the Board that the exceptional practical difficulty was not created by the Applicants.
  - 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 Board is convinced that the proposed garage will not have a negative impact on the neighborhood. The unrebutted testimony indicates that the neighboring properties are owned by the Applicants' family and the immediately adjacent property is actually vacant. The Applicant also testified that the removal of mature trees would likely affect the neighborhood more than if the garage was located in its proposed location. The Board finds this testimony credible and persuasive. The proposed location of the garage will have a minimal, if any, impact on the neighborhood. The granting of this variance request will in no way alter the character of the neighborhood, impair the uses of adjacent properties, or be detrimental to the public welfare. Furthermore, 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 represents the least modification possible of

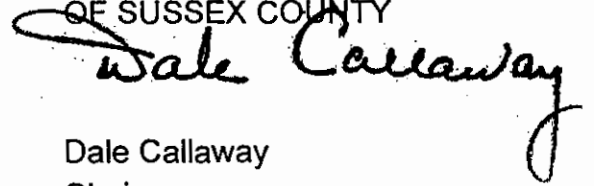
the regulation at issue. The Applicants have demonstrated that the variance sought will allow the proposed garage to be placed in the proposed location while minimally disturbing the mature trees on the Property. The location of the garage also lines up the garage with the existing driveway.

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