

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: MARTHA PRATT

(Case No. 11609)

A hearing was held after due notice on July 20, 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 is seeking a variance of 3.1 feet from the ten (10) feet rear yard setback requirement and a variance of 4.1 feet from the (10) feet side yard setback requirement for an existing detached garage. This application pertains to certain real property located on the south side of Bowman Lane, approximately 157 feet east of West Sherwood Drive within the Sherwood Acres Subdivision (911 Address: 34640 Bowman Lane, Frankford); said property being identified as Sussex County Tax Map Parcel Number 1-34-15.00-63.00.

1. The Board was given copies of the Application, a portion of the tax map of the area, a survey of the Property dated July 9, 2003, a printout of the zoning history for the Property, and an email from Ellen McCreary.
2. The Board found that the Office of Planning & Zoning had not received any correspondence in support of or in opposition to the Application.
3. Martha Pratt was sworn in to testify about the Application.
4. The Board found that Ms. Pratt testified that she recently moved and put the Property up for sale. A survey completed for settlement showed the encroachments.
5. The Board found that Ms. Pratt testified that she was never aware of the encroachments prior to the recent survey.
6. The Board found that Ms. Pratt testified that the detached garage was on the Property when she purchased it years ago and a Certificate of Compliance was issued in 1994 for the detached garage.
7. The Board found that Ms. Pratt testified that the Property is narrow.
8. The Board found that Ms. Pratt testified that it would be an exceptional practical difficulty to move the detached garage into compliance.
9. The Board found that Ms. Pratt testified that the adjacent properties are developed.
10. The Board found that Ms. Pratt testified that the variances do not alter the character of the neighborhood.
11. The Board found that Ms. Pratt testified that the exceptional practical difficulty was not created by the Applicant.
12. The Board found that Ms. Pratt testified that the variances are the minimum variances needed to afford relief.
13. The Board found that one (1) party appeared in support of the Application.
14. The Board found that no parties appeared in opposition to the Application.
15. 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 its narrow width as evidenced by the survey. The unique characteristics of this Property limit the buildable area available to the Applicant and have created an exceptional practical difficulty for the Applicant who seeks to retain a detached garage on the lot.
- b. Due to the uniqueness of the lot, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property has a unique size and the buildable area thereof is limited due to its size. The Applicant seeks to retain a detached garage of a reasonable size but is 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 a reasonably sized garage to remain on the Property. The Board is convinced that the size, shape, and location of this garage are reasonable, which is confirmed when reviewing the survey provided by the Applicant.
- c. The exceptional practical difficulty was not created by the Applicant. The Applicant did not create the unusual size of the Property. The unrebutted testimony confirms that the detached garage was placed by a prior owner and a Certificate of Compliance was obtained. The Applicant believed that the garage was compliant with all zoning ordinances but only learned of the encroachments after a recent survey was completed. The Board is convinced that the exceptional practical difficulty was not created by the Applicant but was created by the size of the lot and the placement of the garage by a prior owner.
- 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 have no effect on the character of the neighborhood. The garage has been in its present location for over twenty years and is likely part of the character of the neighborhood. Neighboring properties have already been developed by improvements so the existence of the garage should have no effect on the development of those properties. 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 Applicant to retain the garage on the Property. No additions to the garage are being proposed which would require additional variances.

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 September 15, 2015.