

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: LYNDA S. MCHUGH

(Case No. 11659)

A hearing was held after due notice on November 2, 2015. The Board members present were: Mr. Dale Callaway, Mr. Jeff Hudson, Mr. John Mills, and Mr. Brent Workman, and Mr. Norman Rickard.

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 Applicant is seeking a variance of 3.7 feet from the fifteen (15) feet side yard setback requirement for an existing detached garage. This application pertains to certain real property located on the south side of Mission Place approximately 1,400 feet east of Mount Joy Road (911 Address: 26774 Mission Place, Millsboro); said property being identified as Sussex County Tax Map Parcel Number 2-34-29.00-299.00.

1. The Board was given copies of the Application, a portion of the tax map of the area, and an undated survey of the Property.
2. The Board found that the Office of Planning & Zoning received had not received any correspondence in support of or in opposition to Application.
3. Lynda McHugh was sworn in to testify about the Application. Stephen Ellis, Esquire, presented the case to the Board on behalf of the Applicant
4. The Board found that Mr. Ellis stated that the Applicant is the Executor of the Estate of Jack Yarish. Mr. Yarish purchased the Property in 1988.
5. The Board found that Mr. Ellis stated that the detached garage was constructed in 1989 and that there have been no changes to the Property since 1989.
6. The Board found that Mr. Ellis stated that the Applicant was not involved in the construction of the garage.
7. The Board found that Mr. Ellis stated that there have not been complaints from neighbors about the existence of the garage.
8. The Board found that Mr. Ellis stated that the difficulty was not created by the Applicant.
9. The Board found that Mr. Ellis stated that the variance will enable reasonable use of the Property.
10. The Board found that Mr. Ellis stated that the variance does not alter the character of the neighborhood.
11. The Board found that Mr. Ellis stated that the variance requested is the minimum variance to afford relief.
12. The Board found that Mr. Ellis stated that the detached garage is on a block foundation and cannot be moved into compliance.
13. The Board found that Ms. McHugh, under oath, affirmed the statements made by Mr. Ellis.
14. The Board found that Don Weber was sworn in and testified in support of the Application.
15. The Board found that Mr. Weber testified that he is purchasing the Property.
16. The Board found that Mr. Weber testified that he has talked with the neighbors and there were no objections to the Application.
17. The Board found that Mr. Weber testified that the variance requested does not alter the character of the neighborhood.
18. The Board found that one (1) party appeared in support of the Application.

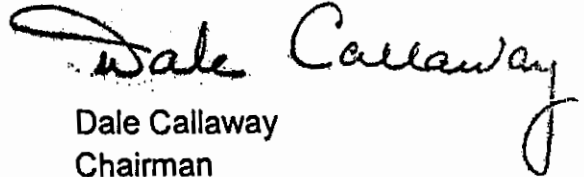
19. The Board found that no parties appeared in opposition to the Application.
20. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, which the Board found credible, persuasive, and un rebutted, the Board determined that the application met the standards for granting a variance. The findings below further support the Board's decision to approve the Application.
 - a. The situation is unique because the deceased prior owner placed the garage on the Property in 1989 after obtaining a building permit. The garage has been on the Property since that time and has not been expanded. The Applicant, who did not place the garage, only recently learned that the garage violates the side yard setback requirement. This unique circumstance has created an exceptional practical difficulty for the Applicant.
 - b. Due to the uniqueness of the situation, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Applicant seeks to retain a garage of reasonable size but is unable to do so without violating the Sussex County Zoning Code. The Board is convinced that the variance is necessary to enable the reasonable use of the Property as the variance will allow a reasonably sized garage to remain on the Property. The garage is located on a block foundation and is over twenty-five (25) years old. The garage cannot be moved into compliance. 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 place the garage on the Property. Rather, the garage was placed by a prior owner who is now deceased. The Board is convinced that the exceptional practical difficulty was not created by the Applicant but was created by the placement of the original garage by a prior owner.
 - 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 garage will have no effect on the character of the neighborhood. The garage has been on the Property for approximately twenty-five (25) years. Despite the longstanding location of the garage, no complaints were noted in the record about its location. 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. The lack of such evidence is telling since the garage has been on the Property for many years. Evidence also suggests that the neighbors actually support this variance request.
 - 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 Applicant has demonstrated that the variance sought will allow the Applicant to retain a reasonably sized garage on the Property. The Applicant does not intend to make any additions to the structure and only seeks the variance to allow the existing garage to remain in its current 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 Board 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 December 15, 2015