

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: DONALD L. MAULL

(Case No. 11661)

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 5.3 feet from the ten (10) feet side yard setback requirement for an existing detached garage. This application pertains to certain real property located on the east side of Old Shawnee Road approximately 287 feet south of Meadow Brook Lane (911 Address: 6203 Old Shawnee Road, Milford); said property being identified as Sussex County Tax Map Parcel Number 1-30-3.00-131.00.

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 July 18, 2015.
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. Sandra Hudson and Donald Maull were sworn in to testify about the Application.
4. The Board found that Ms. Hudson testified that she and Mr. Maull inherited the Property from their parents and they intend to sell the Property. A survey completed for settlement showed that the garage encroached into the side yard setback area.
5. The Board found that Ms. Hudson testified that the Property was purchased by her parents in 1960. She believes that the garage was built in 1968 but they were unable to find a copy of a building permit for the garage to confirm when it was built.
6. The Board found that Ms. Hudson testified that the garage does not alter the character of the neighborhood. Rather, she believes that the garage enhances the neighborhood.
7. The Board found that Ms. Hudson testified that the existing garage is on a block foundation and cannot be moved into compliance.
8. The Board found that Ms. Hudson testified that the neighbors have no objection to the Application.
9. The Board found that Ms. Hudson testified that there are other garages in the area.
10. The Board found that Ms. Hudson testified that the Property is unique due to its narrow width.
11. The Board found that Ms. Hudson testified that the variance requested is the minimum variance to afford relief.
12. The Board found that Duane Fox, Jr. was sworn in and testified in support of the Application. Mr. Fox owns the adjacent property.
13. The Board found that Mr. Fox testified that the garage has not been an issue for the twenty-six (26) years he has lived there.
14. The Board found that Mr. Fox testified that his garage is adjacent to the Applicant's garage and that the variance does not alter the character of the neighborhood.
15. The Board found that one (1) party appeared in support of the Application.

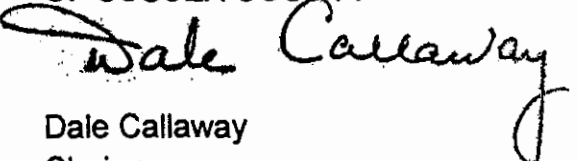
16. The Board found that no parties appeared in opposition to the Application.
17. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, which the Board found credible, persuasive, and un rebutted, the Board determined that the application met 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 its unique size and shape. The Property is very long but is quite narrow in relation to its length 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 an existing 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 shape and the buildable area thereof is limited due to its size and shape. 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 foundation and is over forty-five (45) years old. It cannot be moved into compliance either. 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 or shape of the Property. The Applicant only recently inherited the Property and intends to sell the Property but cannot do so without a variance. The unique lot size has resulted in a limited building envelope on the Property and the narrow building envelope has created the exceptional practical difficulty. The unique characteristics of the Property are clear when reviewing the survey. Furthermore, the garage was placed on the Property by the prior owner. The Board is convinced that the exceptional practical difficulty was not created by the Applicant but was created the lot's unique characteristics and 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 forty (45) years. Despite the longstanding location of the garage, no complaints were noted in the record about its location. Rather, a neighbor testified in support of the variance. 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 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 structures and only seeks the variance to allow the existing structure 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.