

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: JOSEPH R. HALL

(Case No. 11664)

A hearing was held after due notice on November 16, 2015. The Board members present were: Mr. Dale Callaway, Mr. John Mills, Mr. Jeff Hudson, Mr. Norman Rickard, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for variances from the side yard setback requirement.

Findings of Fact

The Board found that the Applicant is seeking a variance of 5.6 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 west side of Fire Tower Road approximately 319 feet north of County Seat Highway (Route 9) (911 Address: 28584 Fire Tower Road, Laurel); said property being identified as Sussex County Tax Map Parcel Number 1-32-13.00-7.02.

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 had not received any correspondence in support of or in opposition to the Application.
3. The Board found that Joseph Hall was sworn in to testify about the Application.
4. The Board found that Mr. Hall testified that he built the detached garage twenty-two (22) years ago. He obtained a building permit and believed that the setback requirement was five (5) feet rather than fifteen (15) feet.
5. The Board found that Mr. Hall testified that Sussex County notified him that the garage did not meet the required setbacks but, at the time, he and his neighbor had no issue with the location of the garage so he did not apply for a variance.
6. The Board found that Mr. Hall testified that he plans to sell the Property and has applied for a variance to bring the Property into compliance.
7. The Board found that Mr. Hall testified that the garage is for personal use only and that the garage is located on a permanent foundation.
8. The Board found that Mr. Hall testified that the dwelling was built in 1981.
9. The Board found that Mr. Hall testified that the detached garage is located in the same location as a previous shed and the garage is no further to the side yard property line than the prior shed.
10. The Board found that Mr. Hall testified that his current neighbors have no objection to the Application.
11. The Board found that no parties appeared in support of or in opposition to the Application.
12. 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 Applicant constructed a garage twenty-two (22) years ago on the Property but mistakenly believed that the side yard setback requirement was less than fifteen (15) feet. The Applicant and his neighbor discussed the need for the variance and the neighbor indicated no objection to the location of the garage. The garage

was also placed on the same location as a previous shed. This unique situation 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 garage has been in its present location for twenty-two (22) years and is located on a permanent foundation. The Board is convinced that the garage cannot easily be moved into compliance. The Board is also 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 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 replaced a shed on the Property with a larger garage and he mistakenly believed that the side yard setback requirement was less than allowed. The Board is convinced that the Applicant relied on this reasonable mistake to his detriment and that the Applicant did not knowingly create the exceptional practical difficulty.
- 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 is reasonable in size and the unrebutted testimony confirms that the neighbors have no objection to the garage. The lack of objection is telling since the garage has been in its present location for many years. 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 represent 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 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 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 January 5, 2016.