

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

**IN RE: BARRY E. HASTINGS**

**(Case No. 11665)**

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 and rear yard setback requirements.

**Findings of Fact**

The Board found that the Applicant is seeking a variance of thirteen (13) feet from the twenty (20) feet rear yard setback requirement and a variance of seven (7) feet from the fifteen (15) feet side yard setback requirement for a proposed detached garage. This application pertains to certain real property located on the west side of Butler Mill Drive in Branchview subdivision of West Stein Highway (911 Address: 25392 Butler Mill Drive, Seaford); said property being identified as Sussex County Tax Map Parcel Number 5-31-12.00-171.00.

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 received two (2) letters in support of the Application and had not received any correspondence in opposition to the Application.
3. The Board found that Barry Hastings was sworn in to testify about the Application. Mr. Hastings submitted two (2) letters in support of the Application.
4. The Board found that Mr. Hastings testified that he recently installed a pool in the rear yard and that he removed an existing shed which measures 10 feet by 16 feet. He would like to build a larger detached garage to be used for storage of pool equipment and one vehicle.
5. The Board found that Mr. Hastings testified that the proposed detached garage will be on block foundation and will match the existing dwelling.
6. The Board found that Mr. Hastings testified that the pool is located in the center of the rear yard. The drainage field for the septic system is on the opposite side of the pool from the location of the proposed garage.
7. The Board found that Mr. Hastings testified that the location of the existing pool and septic system prevent the proposed detached garage from meeting the setback requirements.
8. The Board found that Mr. Hastings testified that the rear yard is completely fenced in and access to the proposed detached garage will be through the fenced in area.
9. The Board found that Mr. Hastings testified that the Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code due to the location of the existing dwelling, attached garage, and pool.
10. The Board found that Mr. Hastings testified that the difficulty was not created by the Applicant.
11. The Board found that Mr. Hastings testified that the variances will not alter the essential character of the neighborhood.
12. The Board found that Mr. Hastings testified that the existence of the garage will enhance property values in the neighborhood.

13. The Board found that Mr. Hastings testified that his neighbors support the Application.
14. The Board found that Mr. Hastings testified that the variances are the minimum variances to afford relief.
15. The Board found that Mr. Hastings testified that he has tried to find other locations on the Property to place the garage and that he removed a few existing trees to make room for the proposed detached garage.
16. The Board found that Mr. Hastings testified that his previous shed was approximately five (5) to six (6) feet from the rear property line and seven (7) to eight (8) feet from the side property line.
17. The Board found that one (1) party appeared in support of the Application.
18. The Board found that no parties appeared 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 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 the location of an existing septic system and pool which limit the placement options for a detached garage. The Property's unique characteristics have created an exceptional practical difficulty for the Applicant who seeks to build a reasonably sized detached garage on the lot.
  - b. Due to the uniqueness of the location of the drainage field and the pool, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Applicant seeks to build a reasonably sized detached garage 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 the detached garage to be constructed 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. Furthermore, the garage will be placed in the approximate location as a shed, which has already been removed from the Property.
  - c. The exceptional practical difficulty was not created by the Applicant. The unique circumstances of the Property have created an exceptional practical difficulty for the Applicant as the area where the Applicant could construct a garage is very limited due to the location of the septic system and pool.
  - 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 will be used for storage of one vehicle and pool equipment. It will be placed in a similar location as where a previous shed was located. While the garage is larger than the shed, its size is reasonable and it will look similar to the nearby dwelling. Most importantly, however, the neighbors appear to support the Application. Furthermore, 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 represents the least modifications possible of the regulations at issue. The Applicant has demonstrated that the variances sought will allow the Applicant to construct a detached

garage on the Property. The Applicant has also attempted to minimize the need for the variance by moving the garage closer to the pool.

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 January 5, 2016.