

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: BRUCE BARNHARD & EILEEN BARNHARD

(Case No. 11668)

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, and 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 Applicants were seeking a variance of 2.5 feet from the five (5) feet side yard setback requirement and a variance of 0.5 feet from the five (5) feet rear yard setback for an existing garage. This application pertains to certain real property located west side of Lagoon Lane approximately 202 feet south of Bay Haven Street (911 Address: 37730 Lagoon Lane, Ocean View); said property being identified as Sussex County Tax Map Parcel Number 1-34-8.00-131.00.

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 14, 2015.
2. The Board found that the Office of Planning and Zoning had not received any correspondence in support of or in opposition to the Application.
3. Eileen Berhard was sworn in to testify about the Application and Manaen Robinson, Esquire, appeared on behalf of the Applicants.
4. The Board found that Mr. Robinson stated that the Property is located in Rogers Haven.
5. The Board found that Mr. Robinson stated that the Applicants purchased the Property in 2015. A survey completed for settlement showed the encroachments for a garage, porch, and deck. The porch and deck have been removed.
6. The Board found that Mr. Robinson stated that the Property is small and narrow. The Property measures 50 feet wide by 106 feet deep.
7. The Board found that Mr. Robinson stated that the garage has been on the lot since 1991.
8. The Board found that Mr. Robinson stated that the Property cannot otherwise be developed and that the variance is necessary to enable reasonable use of the Property.
9. The Board found that Mr. Robinson stated that the exceptional practical difficulty was not created by the Applicants. The garage was placed on the Property by a prior owner.
10. The Board found that Mr. Robinson stated that the variance requested does not alter the character of the neighborhood and the garage does not impair the use of neighboring properties.
11. The Board found that Mr. Robinson stated that the variances requested are the minimum variances to afford relief.
12. The Board found that Ms. Barnhard, under oath, affirmed the statements made by Mr. Robinson.
13. The Board found that no parties appeared in support of or in opposition to the Application.
14. 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. The Property is quite small and is located adjacent to a lagoon as evidenced by the survey. The unique characteristics of this Property limit the buildable area available to the Applicants and have created an exceptional practical difficulty for the Applicants who seek to retain a 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 Applicants seek to retain a garage of a reasonable size but are unable to do so without violating the Sussex County Zoning Code. The garage does not appear as though it can be moved into compliance either. 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 the garage are reasonable, which is confirmed when reviewing the survey provided by the Applicants.
- c. The exceptional practical difficulty was not created by the Applicants. The Applicants did not create the unusual size of the Property. The unique lot size has resulted in a limited building envelope on the Property and the small building envelope has created the exceptional practical difficulty. The unique characteristics of the Property are clear when reviewing the survey. Furthermore, the Applicants did not place the garage on the Property. Rather, the garage was placed on the Property by a prior owner in 1991. The Board is convinced that the exceptional practical difficulty was not created by the Applicants but was created the lot's unique characteristics and by 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 since 1991 and no complaint as to the garage's location has been noted in the record. The lack of such complaints is telling since the garage has been on the Property for so many years. More than likely, the garage is part of the character of the neighborhood due to its long-standing location. Ultimately, 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 Applicants have demonstrated that the variances requested will enable them to retain the garage on the Property. No additions to the garage are being proposed.

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.