

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: CORY BRYAN AND KRISTIN BRYAN

(Case No. 11707)

A hearing was held after due notice on February 1, 2016. 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 a variance from the rear yard setback requirement.

Findings of Fact

The Board found that the Applicants are seeking a variance of 14.5 feet from the twenty (20) feet rear yard setback requirement for a proposed detached garage. This application pertains to certain real property located on the west side of Governor Stockley Road approximately 1,308 feet north of East Piney Grove Road (911 Address: 26330 Governor Stockley Road, Georgetown); said property being identified as Sussex County Tax Map Parcel Number 1-33-10.00-9.07.

1. The Board was given copies of the Application and a survey of the Property dated September 28, 2015.
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 Cory Bryan was sworn in to testify about the Application.
4. The Board found that Mr. Bryan testified that he intends to construct a detached garage in the rear yard.
5. The Board found that Mr. Bryan testified that the Property is unique due to its narrow width and the location of the existing structures and mound septic system. The septic system is located directly behind the deck and metal pole building. There is no other location for the proposed detached garage. Furthermore, due to the location of the drain field and the separation distance needed from a septic system, the garage would not be accessible from any other location.
6. The Board found that Mr. Bryan testified that the Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code.
7. The Board found that Mr. Bryan testified that the difficulty was not created by the Applicants.
8. The Board found that Mr. Bryan testified that the garage will enable reasonable use of the Property. The Applicant plans to park three (3) vehicles in the proposed detached garage.
9. The Board found that Mr. Bryan testified that the existing pole building on the Property is used for his wife's home business.
10. The Board found that Mr. Bryan testified that there is approximately six (6) acres of wooded land to the lands adjacent to the rear of the Property.
11. The Board found that Mr. Bryan testified that, if he constructed the garage in compliance with the Code, the garage would be right next to the septic drain field and would create drainage problems.
12. The Board found that Mr. Bryan testified that he did not choose the location of the septic system. Rather, the Department of Natural Resources and Environmental Control ("DNREC") chose the location of the septic system due to the proximity of the system from a well on neighboring property.
13. The Board found that Mr. Bryan testified that he could lengthen the garage and reduce its depth but he would not then be able to store vehicles in the garage.

The depth of the garage is necessary for him to store his vehicles and the proposed building will line up with the existing driveway.

14. The Board found that Mr. Bryan submitted a letter of support from his neighbor.
15. The Board found that no parties appeared in support of or in opposition to the Application.
16. 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 the septic system. The septic system is located behind an existing deck and pole building and has created an exceptional practical difficulty for the Applicants who seek to construct a garage on the lot. The Applicants must keep the garage a certain distance from the septic system for drainage reasons and would be unable to place the garage elsewhere on the Property.
 - 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 septic system which takes up a significant portion of the building envelope. The Applicants seek to construct a garage of a reasonable size but are unable to do so without violating the Sussex County Zoning Code. While the Applicants could build a smaller garage, a smaller garage would not enable them to park vehicles therein and would defeat the purpose of the garage. The variances are thus, necessary to enable reasonable use of the Property as the variance will allow a reasonably sized garage to be constructed on the Property. The Board is convinced that the shape and location of this 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 unique condition of the lot which has resulted in a limited building envelope on the Property. The unique characteristics of the Property are clear from the record and when reviewing the survey. The Board is convinced that the exceptional practical difficulty was not created by the Applicants but was created by the lot's unique characteristics.
 - 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 will be located in the rear of the Property adjacent to lands which are heavily wooded and the neighbor has indicated his support of the Application. 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 Applicants have demonstrated that the variance sought will allow the Applicants to construct a reasonably sized garage on the Property. The Board is convinced that the proposed location of the garage is the maximum distance necessary from the rear property line in order to fit the vehicles and to be a safe distance away from the septic drain field.

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 March 22, 2016.