

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: DEBRA HALEY

(Case No. 11724)

A hearing was held after due notice on February 29, 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 variances from the side yard setback requirement.

Findings of Fact

The Board found that the Applicant is seeking a variance of 7.4 feet from the ten (10) feet side yard setback requirement on the east side of the Property and a variance of 4.2 feet from the ten (10) feet side yard setback requirement on the east side of the Property for a proposed attached garage. This application pertains to certain real property located on the south side of Lake Shore Drive approximately 2,700 feet south of Dorman Road (911 Address: 11 Lakeshore Drive, Lewes); said property being identified as Sussex County Tax Map Parcel Number 2-34-11.00-254.00.

1. The Board was given copies of the Application, letters of support, a portion of the tax map of the area, a picture of a nearby house, and a survey of the Property dated March 25, 2015.
2. The Board found that the Office of Planning & Zoning received two (2) letters in support of the Application and one (1) letter in opposition to Application.
3. The Board found that Pam McDonald was sworn in to testify about the Application.
4. The Board found that Ms. McDonald testified that the Property is irregularly shaped and narrow.
5. The Board found that Ms. McDonald testified that the mound septic system, existing driveway, and landscaping forced the home to be placed in the current location near the side yard setback line.
6. The Board found that Ms. McDonald testified that the existing location of the dwelling leaves little space to develop the Property.
7. The Board found that Ms. McDonald testified that the septic system is located in the front yard and cannot be relocated.
8. The Board found that Ms. McDonald testified that a small deck and shed are located on the west side of the dwelling.
9. The Board found that Ms. McDonald testified that the proposed garage will line up with the existing driveway and the garage cannot be located elsewhere on the Property.
10. The Board found that Ms. McDonald testified that the difficulty was not created by the Applicant since the Applicant did not build the dwelling.
11. The Board found that Ms. McDonald testified that the proposed attached garage is similar to others in the development and the variances will not alter the character of the neighborhood.
12. The Board found that Ms. McDonald testified that the use is not detrimental to the public welfare.
13. The Board found that Ms. McDonald testified that there is an existing fence and tree line between the Applicant's lot and the adjacent neighbor's lot.
14. The Board found that Ms. McDonald testified that the proposed attached garage will add a level of security to the Applicant's property.

15. The Board found that Ms. McDonald testified that the variances are the minimum variances to afford relief. The proposed attached garage is being located slightly forward of the existing dwelling to minimize the variances needed.
16. The Board found that no parties appeared in support of or 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, 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 narrow width which is evident when reviewing the survey provided by the Applicant. The Property also has a slight pie shape which causes the Property to narrow towards the rear yard. The Property is located adjacent to Burton Pond and the septic system servicing the Property is a mound system in the front of the house. The uniqueness of the Property limits the building envelope on the Property and has created an exceptional practical difficulty for the Applicant who seeks to construct 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 width and the buildable area thereof is limited due to this condition. The Applicant seeks to construct a garage of a reasonable size 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 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 Applicant.
 - c. The exceptional practical difficulty was not created by the Applicant. The Applicant did not create the unusual width of the Property which has resulted in a limited building envelope on the Property. The small building envelope has created the exceptional practical difficulty. Furthermore, the dwelling was placed on the Property by a prior owner and further restricts the area where a garage could be placed. 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 dwelling thereon by the 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. Similar garages are located in the neighborhood and the garage will be an improvement to the Property. The Board was not persuaded by the opposition 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 Applicant has demonstrated that the variances sought will allow the Applicant to construct a reasonably sized garage on the Property. The Board notes that the Applicant proposes to place the garage closer to the front yard setback line as the Applicant has attempted to minimize the size of the variances requested.

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 April 5, 2016.