

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: ANTHONY MORGAN, III – M&M PROPERTIES, LLC

(Case No. 11740)

A hearing was held after due notice on March 21, 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 2.6 feet from the fifteen (15) feet side yard setback requirement on the north side for a proposed attached garage. This application pertains to certain real property located on the west side of Nassau Drive approximately 114 feet south of Minos Conaway Road (911 Address: 31276 Nassau Drive, Lewes); said property being identified as Sussex County Tax Map Parcel Number 3-34-5.00-13.00.

1. The Board was given copies of the Application, drawings of the dwelling, letters of no opposition to the Application, a portion of the tax map, and a survey of the Property dated November 20, 2015.
2. The Board found that the Office of Planning & Zoning received two (2) letters in support of the Application and no letters in opposition to the Application.
3. The Board found that Anthony Morgan, III, was sworn in to testify about the Application. Mr. Morgan submitted exhibits to the Board to review.
4. The Board found that Mr. Morgan testified that he purchased the Property at a Sheriff's sale and he has torn down the existing dwelling. He plans to use the existing foundation for the proposed dwelling.
5. The Board found that Mr. Morgan testified that the prospective buyer is handicapped and uses a wheelchair and the prospective buyer needs an attached garage for better access to the proposed dwelling.
6. The Board found that Mr. Morgan testified that the old dwelling was 20 feet deep and he is adding 10 feet to the rear of the old dwelling as an expansion to the dwelling.
7. The Board found that Mr. Morgan testified that the proposed dwelling will be close to the existing septic system.
8. The Board found that Mr. Morgan testified that the proposed dwelling and garage are similar to other dwellings in the neighborhood.
9. The Board found that Mr. Morgan testified that the Property is unique due to the existing foundation. He is trying to use the same foundation and, if there was no foundation, he could shift the dwelling to fit within the building envelope.
10. The Board found that Mr. Morgan testified that he considered placing the garage where it would face the side of the Property rather than the front but such a placement would require a change in the angle of the driveway.
11. The Board found that Mr. Morgan testified that the proposed location is the best for the proposed attached garage for entry and exit to the house.
12. The Board found that Mr. Morgan testified that the proposed dwelling will be an improvement to the neighborhood and the neighbors support the Application.
13. The Board found that Mr. Morgan testified that the ramp will be within the interior of the proposed attached garage.

14. The Board found that Mr. Morgan testified that, if the Application is denied, he will move the foundation towards the other side of the Property or build a smaller garage.
15. The Board found that Mr. Morgan testified that the Property can be otherwise developed but it would be more expensive to do so.
16. The Board found that Mr. Morgan testified that he is creating the need for the variance.
17. The Board found that no parties appeared in support of or in opposition to the Application.
18. The Board tabled its discussion and vote on the Application until April 4, 2016.
19. 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 failed to meet the standards for granting a variance. The findings below further support the Board's decision to approve the Application.
 - a. The Applicant failed to convince the Board that the Property could not be developed in strict conformity with the Sussex County Zoning Code. Likewise, the Board was not convinced that the variance was necessary to enable the reasonable use of the Property. The Property is a lot consisting only of a septic system and a foundation to a dwelling. The previous dwelling on the Property has been removed and only the foundation remains therefrom. The Applicant intends to construct a new dwelling on the existing foundation while expanding its footprint to the rear and constructing a garage to the side. The Applicant testified that he could move the foundation towards the side yard on the south side of the Property. The Applicant, however, preferred to use the existing foundation. If the Applicant were to shift the foundation, he would be able to construct the garage within the building envelope and no variance would be needed. In fact, the Applicant admitted that, if the Application were denied, he would consider moving the foundation. It is thus clear to the Board that the Applicant can build the garage and develop the Property in strict conformity with the Sussex County Zoning Code and that the variance is not necessary to enable reasonable use of the Property.
 - b. The Board finds that the Applicant is creating his own exceptional practical difficulty by proposing to construct a garage which does not fit within the building envelope. The Applicant's decision to construct a dwelling on the existing foundation rather than moving the foundation so that both the home and the proposed garage will fit within the building envelope is the reason for the need for a variance and has nothing to do with the size, shape, or condition of the Property. As such, the Board was not convinced that the variance request was the product of a *need*. Instead, the variance request appears to be the product of a *want* as the Applicant seeks to build the garage as proposed for purposes of convenience and profit, and / or caprice. Since the Applicant is likely able to comply with the Sussex County Zoning Code – a point which the Applicant admits – the need for the variance is something created by the Applicant's wants rather than an unusual physical condition relating to the Property. The Applicant has thus created his own exceptional practical difficulty.

The Board denied the variance application finding that it failed to meet the standards for granting a variance.

Decision of the Board

Upon motion duly made and seconded, the variance application was denied. The Board Members in favor of the Motion to Deny the Application 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 Deny the variance application.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY


Dale Callaway
Chairman

Date May 17, 2016