

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: LARRY R. SCOTT & BONNIE J. SCOTT

(Case No. 11773)

A hearing was held after due notice on May 16, 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 front yard setback requirement.

Findings of Fact

The Board found that the Applicants are seeking a variance of two (2) feet from the forty (40) feet front yard setback requirement for an existing detached garage. This application pertains to certain real property located on the east side of Smith Mill Church Road approximately 900 feet south of Whitesville Road (911 Address: 36121 Smith Mill Church Road, Delmar); said property being identified as Sussex County Tax Map Parcel Number 5-32-15.00-1.00.

1. The Board was given copies of the Application, a letter in support of the Application, a portion of the tax map of the area, a portion of an undated survey, a survey dated March 3, 2016, and an aerial photograph of the Property.
2. The Board found that the Office of Planning & Zoning received no correspondence in support of or in opposition to the Application.
3. The Board found that Larry Scott, Jr., was sworn in to testify about the Application.
4. The Board found that Mr. Scott testified that the detached garage was built in October 2014 and a building permit was obtained prior to construction. Electric was installed in 2014 and a concrete floor was completed in 2015.
5. The Board found that Mr. Scott testified that the electrician did not arrange for a final electrical inspection and that he did not know this inspection had not been completed.
6. The Board found that Mr. Scott testified that, in September 2015, the Office of Planning and Zoning notified him that a final inspection must be completed. He was later notified that the detached garage did not meet setback requirements.
7. The Board found that Mr. Scott testified that a survey was completed and showed the encroachment.
8. The Board found that Mr. Scott testified that the building permit does not clearly state the setback requirement or that a measurement must be taken from the property line.
9. The Board found that Mr. Scott testified that he lined the detached garage with another existing detached garage on his property. The older garage was on the Property when he purchased it in 1977.
10. The Board found that Mr. Scott testified that four (4) acres of the rear of the Property consist of wetlands.
11. The Board found that Mr. Scott testified that the existing detached garage and wetlands in the rear of the Property make it unique.
12. The Board found that Mr. Scott testified that the garages are on concrete slabs.
13. The Board found that Mr. Scott testified that the Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code.
14. The Board found that Mr. Scott testified that the exceptional practical difficulty was not created by the Applicants.

15. The Board found that Mr. Scott testified that the variance does not alter the essential character of the neighborhood.
16. The Board found that Mr. Scott testified that a neighbor has a garage which also encroaches into the front yard setback requirement.
17. The Board found that Mr. Scott testified that his neighbors support the Application.
18. The Board found that Mr. Scott testified that the garage is fifty (50) feet from the adjacent road.
19. The Board found that one (1) party appeared in support of the Application.
20. The Board found that no parties appeared in opposition to the Application.
21. 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 because a significant portion of the rear yard consists of wetlands thereby greatly limiting the building envelope for the Property. The Property is also unique because the front yard property line does not line up with the edge of paving for the adjacent road. This condition gives the impression that the front yard is larger than it actually is. The uniqueness of the situation and the conditions of the Property created an exceptional practical difficulty for the Applicant who seeks to retain the garage on the lot. The Board also notes that the Applicant relied on a contractor to install the garage in compliance with the Sussex County Zoning Code.
 - b. Due to the uniqueness of the Property and the situation, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The garage was placed on a concrete slab but the garage encroaches slightly into the front yard setback area. The Applicants are unable to retain the garage without violating the Sussex County Zoning Code. The Board is convinced that the variance is necessary to enable the reasonable use of the Property as the variance will allow a reasonably sized garage to remain on the Property. The Board is convinced that the shape and location of this garage are also reasonable, which is confirmed when reviewing the survey provided by the Applicants. The Board notes that the rear of the Property cannot be developed due to the existence of wetlands thereby greatly limited the area where a garage can be placed.
 - c. The exceptional practical difficulty was not created by the Applicants. The Applicants did not create the wetlands which occupy most of the rear of the Property. The Applicants also relied on its contractor to place the garage on the Property in compliance with the Sussex County Zoning Code. It appears as though the garage was placed based in its location based on a misunderstanding of the reading of the building permit. This misunderstanding was compounded by the fact that the edge of paving of the adjacent street does not line up with the front yard property line. If the front property line matched up with the existing edge of paving of the road, no variance would be needed. It is thus clear to the Board that the exceptional practical difficulty was created by the wetlands in the rear yard which limit the placement options, the Applicants' reliance on the builder, and the mistaken understanding as to where the garage could be placed.
 - 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 was placed in a similar location as another garage which has been on the Property since at least 1977 with no apparent complaints. A garage on neighboring property is also similarly situated. Despite notice to neighbors, no complaints were noted in the record about its location. Rather, the Applicant has testified that his neighbors support the request. Furthermore, 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 retain the garage on the Property. No additions to the garage are 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 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 July 13, 2016.