

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: WILLIAM K. MESSMER & EDNA M. MESSMER

(Case No. 11783)

A hearing was held after due notice on June 6, 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 special use exception for a private garage for more than four (4) automobiles and 900 square feet floor area.

Findings of Fact

The Board found that the Applicants are requesting a special use for a private garage for more than four (4) cars and consisting of more than 900 square feet of floor area. This application pertains to certain real property located on the north side of Middleford Road approximately 97 feet west of Pineview Road (911 Address: 9445 Middleford Road, Seaford); said property being identified as Sussex County Tax Map Parcel Number 3-31-6.00-50.00. After a hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, an undated survey of the Property, an aerial photograph of the Property, a portion of the tax map of the area, and photographs of the Property and nearby properties.
2. The Board found that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application.
3. The Board found that William Messmer was sworn in and testified regarding the Application.
4. The Board found that Mr. Messmer testified that he lives on the Property.
5. The Board found that Mr. Messmer testified that the proposed garage will not substantially adversely affect the uses of the neighboring and adjacent properties.
6. The Board found that Mr. Messmer testified that he plans to store his vehicles and have a work area to repair the cars. The garage will not be commercial and will only be used for his personal use. He has been collecting antique cars since he was sixteen (16) years old and he has seven (7) vehicles in total. He restores the vehicles and is a member of different vintage car clubs.
7. The Board found that Mr. Messmer testified that he was not aware he needed a special use exception until applying for the building permit.
8. The Board found that Mr. Messmer testified that there similar garages in the area.
9. The Board found that Mr. Messmer testified that the proposed garage will meet all setback requirements.
10. The Board found that Ruth Anne Forbes Thompson was sworn in and testified in opposition to the Application.
11. The Board found that Ms. Thompson testified that she owns the Property next door and is concerned the garage will not conform to the area.
12. The Board found that Ms. Thompson testified that she was not aware of other garages in the neighborhood similar to the proposed garage.
13. The Board found that Ms. Thompson testified that the garage seems like a commercial use because it is so large. She is concerned about the effect of the proposed garage on property values and the potential for car sales and noise issues is also a concern.

14. The Board found that Ms. Thompson testified that she is unsure if the garage being used for personal use would create a substantial adverse effect on her property.
15. The Board found that Ms. Thompson testified that she does not live on her property full-time but plans to move to the area after retirement.
16. The Board found that Ms. Thompson testified that she would not object to a home being built of the same size as the garage.
17. The Board found that Mr. Messmer testified that the Property is wooded and consists of 1.41 acres. The trees will block the neighbor's view of the proposed garage and the only direct view of the proposed garage would be from Middleford Road.
18. The Board found that no parties appeared in support of the Application.
19. The Board found that one (1) party appeared in opposition to the Application.
20. 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 special use exception because the proposed garage as shown on the schematic will not substantially affect adversely the uses of neighboring and adjacent properties. The findings below further support the Board's decision to approve the Application.
 - a. The proposed garage is similar to other structures on neighboring properties. While the opposition testified that she did not know of other similar garages in the area, the pictures and testimony provided by the Applicants were persuasive that there are other similar garages in the area.
 - b. The Property is over an acre in size and is heavily wooded which should shield view of the garage from neighbors. The secluded nature of the Property is clear when reviewing the aerial photograph.
 - c. The garage will only be used to store personal items owned by the Applicants and will not be used for commercial or business purposes. The opposition presented concerns that a commercial garage may have a substantial adverse effect on her property but the Applicants made it clear that he would only be using the garage for his personal use.
 - d. The opposition speculated that the garage would have an adverse effect on property values but no evidence such as appraisals or testimony from a realtor was submitted to substantiate this claim. The Board finds this concern to be speculative and unpersuasive.
 - e. While the opposition opposed the size of the garage, she testified that she would have no problem with a house of that size being placed on the Property. It is difficult for the Board to see in this instance how a garage used only for personal use would somehow affect neighboring properties any differently than a dwelling of the same size which would also be used for personal use.
 - f. There was no evidence presented which convinced the Board that the garage would have a substantial adverse effect on noise, smells, or traffic in the area.
 - g. Ultimately, no evidence was presented to the Board which persuaded the Board that the proposed garage would substantially affect adversely the uses of neighboring and adjacent properties.

The Board granted the special use exception application finding that it met the standards for granting a special use exception.

Decision of the Board

Upon motion duly made and seconded, the special use exception 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 special use exception 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 August 2, 2016.