

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: EDWARD HINCZYNSKI & CARYL BAFF HINCZYNSKI

(Case No. 11793)

A hearing was held after due notice on July 11, 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 side yard setback requirement.

Findings of Fact

The Board found that the Applicants are seeking a variance of 1.9 feet from the fifteen (15) feet side yard setback requirement for an existing garage. This application pertains to certain real property located on the north side of Willow Drive approximately 474 feet west of Lakeview Road. (911 Address: 23560 Willow Drive, Millsboro); said property being identified as Sussex County Tax Map Parcel Number 1-33-19.00-367.00.

1. The Board was given copies of the Application, a survey of the Property dated March 11, 2016, a survey of the Property dated November 21, 2005, a record plan of the Willow Valley Subdivision dated January 15, 2002, a building permit, a certificate of compliance, a plan review report, drawings of the garage, and a portion of the tax map.
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 Ed Hinczynski was sworn in to testify about the Application. Raymond Tomasetti, Esquire, presented the case on behalf of the Applicants and submitted exhibits, including pictures, for the Board to review.
4. The Board found that Mr. Tomasetti stated that the Applicants purchased the Property with the existing garage.
5. The Board found that Mr. Tomasetti stated that the previous owner built the garage and a building permit and a Certificate of Compliance were obtained for the garage.
6. The Board found that Mr. Tomasetti stated that the Homeowners Association approved the garage.
7. The Board found that Mr. Tomasetti stated that the Property is narrow making it unique.
8. The Board found that Mr. Tomasetti stated that the exceptional practical difficulty was not created by the Applicants.
9. The Board found that Mr. Tomasetti stated that the garage has been on the Property for eight (8) years.
10. The Board found that Mr. Tomasetti stated that the garage does not alter the character of the neighborhood and the use is not detrimental to the public welfare.
11. The Board found that Mr. Tomasetti stated that the variance requested is the minimum variance to afford relief.
12. The Board found that Mr. Tomasetti stated that the garage cannot be moved into compliance.
13. The Board found that Mr. Hinczynski, under oath, affirmed the statements made by Mr. Tomasetti.
14. The Board found that Mr. Hinczynski testified that he purchased the Property in April 2016.
15. The Board found that Mr. Hinczynski testified that the garage was built in 2008 and is on a concrete slab. The previous owner was unaware of the encroachment.

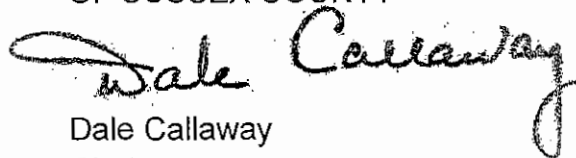
16. The Board found that no parties appeared in support of or in opposition to the Application.
17. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, which the Board found credible, persuasive, and un rebutted, the Board determined that 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 as it is a through lot which creates a small building envelope. The situation is also unique because a previous owner built the garage and received a certificate of compliance evidencing compliance with the Sussex County Zoning Code only to later find out that the garage did not comply with the Code. The unique characteristics of the lot and the error in construction (and issuance of a certificate of compliance) have created an exceptional practical difficulty for the Applicants who seek to retain an existing garage 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 unique building envelope due to the two front yard setback requirements. The Applicants seek to retain a garage of a reasonable size but are unable to do so without violating the Sussex County Zoning Code. The variance is thus necessary to enable 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 also notes that the garage is located on a concrete slab and cannot be moved into compliance without a great and unnecessary expense.
 - c. The exceptional practical difficulty was not created by the Applicants. The Applicants did not create the unique conditions 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 the survey. The difficulty was exacerbated by error in construction by the builder who placed the garage into the setback area. Notably, the garage was constructed by a prior owner and not the Applicants. The Board is convinced that the exceptional practical difficulty was not created by the Applicants but was created by the lot's unique characteristics and by the error in construction by a prior owner.
 - 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 side yard and only slightly encroaches into the setback area. The Board notes that the homeowners association support of the Application. The garage has also been in its present location for several years yet 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 a reasonably sized garage on the Property and that no additions thereto are being sought.

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 September 13, 2016.