

**BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY**

**IN RE: JAMES FREEMAN**

**(Case No. 11802)**

A hearing was held after due notice on July 18, 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 front yard and side yard setback requirements.

Findings of Fact

The Board found that the Applicant is seeking a variance of 7.1 feet from the thirty (30) feet front yard setback requirement for a proposed addition and a variance of two (2) feet from the ten (10) feet side yard setback requirement for an existing outside shower. This application pertains to certain real property is located on the south side of Trout Terrace North approximately 0.34 miles east of Lighthouse Road (911 Address: 36964 Trout Terrace North, Selbyville); said property being identified as Sussex County Tax Map Parcel Number 5-33-12.00-771.00.

1. The Board was given copies of the Application, a portion of the tax map of the area, an aerial photograph of the Property, and a survey of the Property dated May 3, 2016.
2. The Board found that the Office of Planning & Zoning received one (1) letter in opposition to the Application and no correspondence in support of the Application.
3. James Freeman was sworn in to testify about the Application. Michael McGroerty, Esquire, presented the case and submitted exhibits for the Board to review including a survey of the Property dated December 23, 2015, and a drawing of the proposed addition.
4. The Board found that Mr. Freeman testified that he has undergone numerous surgeries over the years to his back, shoulder, knees, and foot and will have reconstructive foot surgery soon that will require the use of a wheelchair. These surgeries have been related to injury in the Vietnam War.
5. The Board found that Mr. Freeman testified that the proposed addition for the garage was initially to provide storage for his boat and antique car but, due to his surgery, the addition is now needed to provide him the ability to navigate around the garage in a wheelchair.
6. The Board found that Mr. Freeman testified that the size of the existing garage does not allow enough space for a passenger to exit a vehicle and enter the dwelling from the interior of the garage.
7. The Board found that Mr. Freeman testified that the garage is wide enough to accommodate a boat and a car but the garage is not deep enough. If he was required to install a ramp, he could probably only fit the car in the garage. He believes he will need at least 8 feet to accommodate a vehicle and ramp in the garage. The required ramp will be approximately 3 to 4 feet from the wall.
8. The Board found that Mr. Freeman testified that the exterior of the proposed addition will match the exterior of the existing dwelling.
9. The Board found that Mr. Freeman testified that he did not create the need for the variance.
10. The Board found that Mr. Freeman testified that the garage cannot be expanded in a different direction because the wall of the adjoining house is a structural wall and a bathroom and laundry room are located on the other side of the wall.

11. The Board found that Mr. Freeman testified that he is unable to use the second floor of the dwelling due to his disability.
12. The Board found that Mr. Freeman testified that he has submitted an application to the Swann Cove Architectural Review Committee.
13. The Board found that Mr. Freeman testified that he can reduce the size of the addition from 10.5 feet as shown on the survey.
14. The Board found that Mr. Freeman testified that the proposed addition will not create parking issues and will still have room for four (4) cars to park on his lot. Mr. Freeman parked three (3) cars on his neighbor's lot recently after receiving permission from his neighbor. There are parking problems in the neighborhood.
15. The Board found that Mr. Freeman testified that the existing garage measures 21 feet by 19 feet.
16. The Board found that Mr. Freeman testified that between the edge of paving of the adjacent road and the front property line is 4 feet of grass, a sidewalk, and a 1.5 foot grass strip. There is approximately 7.5 feet between his front property line and the edge of paving.
17. The Board found that Mr. Freeman testified that he purchased the Property as it currently exists and he has not made any changes to the Property.
18. The Board found that Mr. Freeman testified that he did not create the exceptional practical difficulty.
19. The Board found that Mr. Freeman testified that the existing outside shower was located on the Property when he purchased the lot. He has received no complaints about the shower and he was unaware that the outside shower encroached into the setback area.
20. The Board found that Mr. McGroerty stated that the Applicant's medical condition has created the exceptional practical difficulty. The Applicant also did not build the house or the garage.
21. The Board found that Mr. McGroerty stated that the size of the existing garage limits access from the garage to the interior of the dwelling because a parked vehicle blocks access to the house. Once parked, the Applicant has to leave the garage and walk outside the garage to access the dwelling.
22. The Board found that Mr. McGroerty stated that the Applicant's medical problems further complicate the Applicant's ability to use the garage.
23. The Board found that Mr. McGroerty stated that the issue with the garage is its lack of depth.
24. The Board found that Mr. McGroerty stated that the proposed garage addition will allow him to access the dwelling from the interior of the garage.
25. The Board found that Mr. McGroerty stated that the Applicant will still have ample parking even after the garage is expanded.
26. The Board found that Mr. McGroerty stated that the Applicant would like to retain the shower.
27. The Board found that Mr. McGroerty stated that that the Applicant needs the 8 feet addition and that the addition of 10.5 feet would allow the Applicant to store the boat with the motor attached.
28. The Board found that Mary Brennan and Tom Fowler were sworn in and testified in opposition to the Application.
29. The Board found that Ms. Brennan testified that she is the President of the Homeowners Association and the Homeowners Association is opposed to the proposed 10.5 feet addition. There have been no discussions with the Homeowners Association of an eight (8) feet addition.
30. The Board found that Ms. Brennan testified that the Association has made no promises to the Applicant that the proposed addition would be approved by the Association.

31. The Board found that Ms. Brennan testified that the neighbors are in opposition to the Application as they are concerned that the garage will not conform to the neighborhood and the addition will create parking problems.
32. The Board found that Ms. Brennan testified that the proposed addition will extend out further than other structures in the neighborhood.
33. The Board found that Ms. Brennan testified that the Applicant only mentioned the garage would be used for storage of an antique car and boat and the medical reason for the garage was never discussed with the Association.
34. The Board found that Ms. Brennan testified that the garages in the neighborhood are small.
35. The Board found that Mr. Fowler testified that he is the head of the Architectural Review Board.
36. The Board found that Mr. Fowler testified that the Applicant had no discussion prior to purchasing the Property about the ability to add on to the existing dwelling.
37. The Board found that Mr. Fowler testified that 2 to 4 feet extensions have been approved in the past by the Association but those additions met setback requirements. The smaller additions did not encroach or protrude farther than the existing dwellings in the neighborhood.
38. The Board found that Mr. Fowler testified that the proposed addition was only discussed to store a boat and that the Applicant's medical needs were not discussed.
39. The Board found that Mr. Fowler testified that an addition measuring 8 feet deep would accommodate the Applicant's boat with the motor removed.
40. The Board found that Mr. Fowler testified that he is able to park a van in his garage. His garage measures 20 feet by 19 feet and he believes that he would be able to get a wheelchair out of his van. He also believes the garage could accommodate a ramp but not allow for work bench space.
41. The Board found that no parties appeared in support of the Application.
42. The Board found that five (5) parties appeared in opposition to the Application.
43. The Board tabled its decision on the Application until August 1, 2016, at which time the Board discussed and voted on the Application.
44. 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 situation is unique because the Applicant suffers from medical problems which limit his ability to use the Property. The Property contains an existing attached garage which is shallow in depth and limits the ability of a user to park a vehicle and access the dwelling. This problem is exacerbated by the Applicant's pending reconstructive surgery which will necessitate that he use a wheelchair for a period of time. The Applicant already has difficulty climbing stairs and accessing the second floor of his dwelling. Notably, the garage was constructed by a prior owner. The Board finds that the Applicant's medical condition and the shallowness of the existing garage have created an exceptional practical difficulty for the Applicant who wish to keep the reasonably expand the garage. The situation is also unique because a shower was built slightly into the side yard setback by a prior owner.
  - b. Due to the uniqueness of the situation, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Applicant needs to expand the depth of the existing garage to provide safe access from his vehicle. Currently, he is unable to access the interior of the dwelling from the garage because a car, once parked, blocks the access. The need for interior access is imperative due to the Applicant's medical problems and

the need for wheelchair access to the home. The garage is attached to an existing dwelling and cannot be expanded towards the dwelling due to the location of a structural wall, a bathroom, and laundry room. The only area to expand the garage is towards the front yard. The Applicant seeks to expand the garage in the front yard but is unable to do so without violating the Sussex County Zoning Code. Likewise, the Applicant seeks to retain an outdoor shower which was installed by a prior owner in the side yard setback area. It is clear from the survey that the shower cannot be placed elsewhere on the Property in strict conformity with the Sussex County Zoning Code. The Board is thus convinced that the variances are necessary to enable the reasonable use of the Property as the variances will allow the Applicant to retain the shower and to expand the garage. The Board is convinced that the size, shape, and location of the shower and garage are reasonable.

- c. The exceptional practical difficulty was not created by the Applicant. The Applicant did not place the shower or garage on the Property nor did the Applicant create his medical problems. The construction of the original garage at a shallow depth has particularly created an exceptional practical difficulty as the Applicant needs to reasonably expand the garage to allow safe access to the dwelling. The unique characteristics of the Property are clear when reviewing the survey. The Board is convinced that the exceptional practical difficulty was not created by the Applicant but was created by the Applicant's medical condition and by the placement of the garage and shower by a 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 shower and garage addition will have no effect on the character of the neighborhood. The shower has been on the Property for many years and, despite the longstanding location of the shower, no complaints were noted in the record about its location. While the Board heard concerns about the location of the addition, the Board is not convinced that the addition would alter the essential character of the neighborhood. The garage will expand into the front yard setback area but the front yard property line is approximately 7.5 feet from the edge of paving thereby giving the front yard the appearance of being deeper than it actually is. The Applicant has testified that, even with the addition, he will have ample parking on the Property and the Board finds this testimony credible and persuasive. The Board was not convinced by the opposition that the variances would somehow alter the essential character of the neighborhood or be detrimental to the public welfare. The Board does note, however, that the Applicant has an application to the homeowners association for the addition so the association will have an opportunity to vet the addition in accordance with its rules and regulations.
- 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 retain the shower in its current location and to expand the garage on the lot. The Applicant has reduced the size of the garage addition to minimize the intrusion into the front yard setback and the Board finds that a variance of 5.1 feet into the front yard setback area is appropriate. Notably, the Applicant initially sought a variance of 7.1 feet into the front yard setback area. Furthermore, the Applicant explored the idea of expanding the garage towards the dwelling to minimize the need for

a variance but was unable to do so due to the location of a structural wall, bathroom, and laundry room. Ultimately, the size of the garage addition is the minimum size necessary for the Applicant to reasonably access his dwelling from the interior of the garage while using a wheelchair.

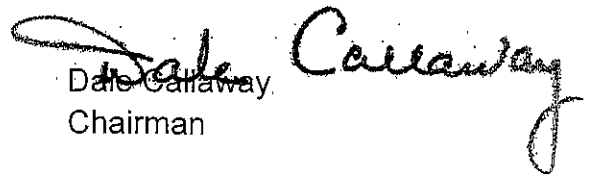
- f. The Board also finds that the Applicant suffers from a disability and that the variance approval represents a reasonable accommodation.
- g. The Board approves a front yard variance of 5.1 feet thereby allowing the Applicant to construct an addition to the garage measuring 8.5 feet deep rather than 10.5 feet as shown on the survey.

The Board granted the variance application with modification 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 as modified. 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 as modified.

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 October 4, 2016.