

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

**IN RE: SHARON MARIE ELIASON**

**(Case No. 11858)**

A hearing was held after due notice on October 17, 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 Applicant is seeking a variance of 27.6 feet from the thirty (30) feet front yard setback requirement along Idaho Court for an existing detached garage. This application pertains to certain real property located at the southwest corner of Minnesota Street and Idaho Court in Sand Dunes Village (911 Address: 32690 Minnesota Street, Lewes); said property being identified as Sussex County Tax Map Parcel Number 3-35-11.00-38.00.

1. The Board was given copies of the Application, an aerial photograph of the Property, an undated survey of the Property, a Certificate of Compliance dated August 5, 2002, 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 Chester Carbaugh was sworn in to testify about the Application. Chad Meredith, Esquire, presented the case on behalf of the Applicant and submitted pictures for the Board to review.
4. The Board found that Mr. Meredith stated that the Applicant's husband purchased the Property in 1993 and her name was added to the deed to the Property in 2004. The Applicant became the sole owner of the Property in March 2015.
5. The Board found that Mr. Meredith stated that the original survey showed the house, porch, and shed.
6. The Board found that Mr. Meredith stated that the Applicant is selling the Property. A new survey was completed for settlement and showed the encroachments and the existence of the garage.
7. The Board found that Mr. Meredith stated that two (2) sheds and two (2) carports will be removed from the Property.
8. The Board found that Mr. Meredith stated that the variance is needed for the detached garage.
9. The Board found that Mr. Meredith stated that the detached garage was built in 2002 and a Certificate of Compliance was issued. A building permit was issued in 2007 to finish the second floor of the detached garage.
10. The Board found that Mr. Meredith stated that the edge of the road is not in line with the property line. The garage is 19 feet from the edge of paving and there are large trees located between the property line and the edge of paving.
11. The Board found that Mr. Meredith stated that the Applicant was unaware of the encroachments and believes the builder thought the setback requirement for the detached garage was fifteen (15) feet from the property line along Idaho Court and used the edge of paving as the presumed property line.
12. The Board found that Mr. Meredith stated that the Applicant has received no complaints from neighbors about the garage.
13. The Board found that Mr. Meredith stated that neighboring properties have been developed.

14. The Board found that Mr. Meredith stated that there appears to be no need to expand the width of Idaho Court.
15. The Board found that Mr. Meredith stated that Idaho Court is a dead end road servicing six (6) other properties.
16. The Board found that Mr. Meredith stated that the Property is unique.
17. The Board found that Mr. Meredith stated that an exceptional practical difficulty has been created by the Property's uniqueness.
18. The Board found that Mr. Meredith stated that the Property cannot otherwise be developed in strict conformity without removing the detached garage.
19. The Board found that Mr. Meredith stated that the variance is necessary to enable reasonable use of the Property.
20. The Board found that Mr. Meredith stated that the exceptional practical difficulty was not created by the Applicant.
21. The Board found that Mr. Meredith stated that the Applicants relied on the builder and received a Certificate of Compliance for the detached garage.
22. The Board found that Mr. Meredith stated that the variance does not alter the essential character of the neighborhood and the variance does not impair the uses or development of the neighboring and adjacent properties.
23. The Board found that Mr. Meredith stated that the use is not detrimental to the public welfare.
24. The Board found that Mr. Meredith stated that the variance is the minimum variance necessary to afford relief and the variance represents the least modification of the regulation at issue.
25. The Board found that Mr. Carbaugh, under oath, affirmed the statements made by Mr. Meredith.
26. The Board found that Mr. Carbaugh testified that he has been a realtor in the area for three (3) years and that the variance will not have a negative impact on property values.
27. The Board found that Mr. Carbaugh testified that the space above the garage was used by the Applicant's son and child. The new owner plans to use the space as an office.
28. The Board found that Pauline Powell, Diane McIlveen, and William Powell were sworn in and testified in opposition to the Application.
29. The Board found that Ms. Powell testified that she has lived in the development for forty-two (42) years.
30. The Board found that Ms. Powell testified that a business cannot be operated at this Property due to deed restrictions.
31. The Board found that Ms. Powell testified that the space above the garage can be used for family members only per deed restrictions. The garage apartment was used by the Applicant's family members and that use did not violate the deed restrictions.
32. The Board found that Ms. Powell testified that commercial use of this Property would create additional traffic to the area and the roads are narrow in the neighborhood.
33. The Board found that Ms. Powell testified that she believes the garage should be brought into compliance and that the variance request is too large.
34. The Board found that Ms. McIlveen testified that the realtor marketed the apartment as a separate living quarters and that the space provided a great investment opportunity. The apartment above the garage has a kitchenette.
35. The Board found that Mr. Meredith stated that the Applicant is only seeking a variance. The Applicant is not seeking additional living or commercial uses and the Applicant will comply with the deed restrictions. The Applicant would seek the proper approvals if in the future changes to the Property are to be made.

36. The Board found that Mr. Powell testified that he had no objection to the building when it was constructed in 2002.
37. The Board found that no parties appeared in support of the Application.
38. The Board found that four (4) parties appeared in opposition to the Application.
39. 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 Property is unique as it is a corner lot which has a dwelling that fronts along Minnesota Street rather than Idaho Court, which is the front yard. The Property is also unique because the front property line does not match the edge of paving and there is a significant distance between the property line and edge of paving and the property line. This gap has created the illusion that the Property is larger than it actually is. The unique conditions of the Property have created an exceptional practical difficulty for the Applicant. Additionally, the Applicant did not place the garage on the Property so close to the front yard property line. A previous owner placed the garage in that location and reasonably believed it complied with the Sussex County Zoning Code only to find out later that it did not comply with the 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 constructed approximately fourteen (14) years ago by a prior owner and the Applicant seeks to retain the garage in its existing location but is unable to do so 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 the garage to remain on the Property. The Board is convinced that the shape and location of this garage are reasonable, which is confirmed when reviewing the survey provided by the Applicant.
  - c. The exceptional practical difficulty was not created by the Applicant. The Property has unique conditions which have created the exceptional practical difficulty. Furthermore, the Applicant did not build the garage. Rather, the garage was placed on the Property by a prior owner who reasonably believed that the garage complied with the Code because a Certificate of Compliance was issued only for the Applicant to later find out the garage did not comply with the Code. The Board finds that the previous owner detrimentally relied on this Certificate of Compliance. Since the Property has unique conditions and the Applicant did not place the garage on the Property, the Board find that the Applicant did not create the exceptional practical difficulty.
  - 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 garage has been on the Property for approximately fourteen (14) years. The neighbors who opposed the garage appeared to be more concerned with its potential use for commercial purposes but the Board was not convinced that the existence of the garage itself has altered the essential character of the neighborhood. If the garage were to be used for commercial purposes or otherwise in violation of the Sussex County Zoning Code, the opposition could lodge a complaint with the Planning & Zoning Office. The Board also notes that the opposition raised concerns about the possible violation of deed restrictions but the Board does not have jurisdiction over deed restrictions. Ultimately, the Board was not convinced that the existence of

the garage in its present location has somehow altered 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 Applicant has demonstrated that the variance sought will allow the Applicant to retain the garage in its existing location. No additions to the garage are being 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 December 20, 2016.