

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: HAROLD C. LLOYD, JR.

(Case No. 11862)

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 side yard setback requirement.

Findings of Fact

The Board found that the Applicant is seeking a variance of 5.4 feet from the fifteen (15) feet side yard setback requirement on the south side for an existing detached garage. This application pertains to certain real property located on the east side of Whites Neck Road approximately 500 feet north of Atlantic Avenue (911 Address: 31113 Whites Neck Road, Millville); said property being identified as Sussex County Tax Map Parcel Number 1-34-12.00-40.00.

1. The Board was given copies of the Application, a survey of the Property dated August 29, 2016, an aerial photograph of the Property, 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 Harold Lloyd, Jr., was sworn in to testify about the Application.
4. The Board found that Mr. Lloyd testified that the Property is identified as Lots 3 and 4 but are under the same deed. He plans to separate the two (2) lots and give Lot 4 to his son.
5. The Board found that Mr. Lloyd testified that the detached garage extends into the proposed side yard setback area.
6. The Board found that Mr. Lloyd testified that his dwelling is located on Lot 3 and the garage is located on Lot 4.
7. The Board found that Mr. Lloyd testified that his son intends to build a dwelling on Lot 4.
8. The Board found that Mr. Lloyd testified that he needs the variance in order to separate the two (2) lots.
9. The Board found that Mr. Lloyd testified that the separation of the two (2) lots creates a uniqueness to the Property and the Property cannot be subdivided without a variance.
10. The Board found that Mr. Lloyd testified that, when he built the detached garage, he had no plans to separate the two (2) lots. The garage was built approximately ten (10) years ago.
11. The Board found that Mr. Lloyd testified that the variance is the minimum necessary to afford relief.
12. The Board found that Mr. Lloyd testified that he has owned the lots for forty-six (46) years.
13. The Board found that Mr. Lloyd testified that the lots were combined at the time he purchased the Property. The lots were included under one deed when he acquired the Property.
14. The Board found that Mr. Lloyd testified that there was originally a chicken house on Lot 4 but that chicken house has since been demolished.

15. The Board found that Mr. Lloyd testified that Lots 3 and 4 are part of a recorded subdivision.
16. The Board found that Mr. Lloyd testified that he discussed the subdivision with neighbors to the south and they do not object to the variance.
17. The Board found that no parties appeared in support of or in opposition to the Application.
18. 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 consists of two lots (Lot 3 and Lot 4) in a subdivision that are combined under one deed. The Applicant has owned the Lots for 46 years and wishes to restore the subdivision line so that he can transfer a lot to his son. The Property was created and developed prior to the enactment of the Sussex County Zoning Code and consists of 1.8231 acres; as is clearly shown on the survey. The Applicant is able to subdivide the Property without a variance but a detached garage is located on Lot 4 and is too close to the proposed side yard setback line. The garage has been on the Property for approximately ten (10) years. The Board finds that this situation is unique and has created an exceptional practical difficulty for the Applicant who seeks to restore an initial subdivision line.
 - b. Due to the uniqueness of the Property, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The garage was constructed approximately ten (10) years ago and the Applicant seeks to retain the garage on the same footprint but is unable to do so without violating the Sussex County Zoning Code while still restoring the original subdivision of the Property. 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 was created and developed prior to the enactment of the Sussex County Zoning Code and consists of two (2) lots. Based on the Sussex County Tax Map, the lots appear to be of the same approximate size and shape as other lots in the area along the east side of County Road 347. The Applicant seeks to restore the original subdivision line that existed prior to his acquisition of the Property so that he can deed a lot to his son. A detached garage, however, exists too close to the proposed property line. The Applicant testified that he did not intend to subdivide the Property when he built the garage and the Board finds this testimony credible. Rather, the Applicant seeks to simply restore the subdivision lines that existed prior to his acquisition of the Property. The Board finds that this situation is unique and this uniqueness has created the exceptional practical difficulty for the Applicant.
 - 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 many years without recorded complaints and the garage will not change its location. Despite the longstanding location of the dwelling and notification to neighbors, no complaints were noted in the record about its location. Rather, the Applicant has spoken with his neighbor and the neighbor supports the Application. Additionally, 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. Furthermore, the Applicant will retain ownership of Lot 3, which is the Property that would be affected by the encroachment into the side yard setback area.

- 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 on the same footprint. 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.