

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

**IN RE: THOMAS K. RIGGIN**

**(Case No. 11871)**

A hearing was held after due notice on November 7, 2016. The Board members present were: Mr. Dale Callaway, Mr. John Mills, Mr. Jeff Hudson, 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 ten (10) feet from the fifteen (15) feet side yard setback requirement on the west side for a proposed detached garage. This application pertains to certain real property located on south side of Sharptown Road approximately 646 feet east of Mount Pleasant Road (911 Address: 6544 Sharptown Road, Laurel); said property being identified as Sussex County Tax Map Parcel Number 4-32-11.00-45.06.

1. The Board was given copies of the Application, a survey of the Property dated September 26, 2016, a drawing of the proposed garage, a letter of support from a neighbor, an aerial photograph of the Property, and a portion of the tax map of the area.
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 Thomas Riggins was sworn in to testify about the Application.
4. The Board found that Mr. Riggins testified that the existing dwelling is located thirty (30) feet from the side property line.
5. The Board found that Mr. Riggins testified that the existing septic tank and drain field take up majority of the rear yard and the existing driveway is less than one (1) foot from the side property line.
6. The Board found that Mr. Riggins testified that the Property cannot otherwise be developed in strict conformity due to the location of the existing septic system.
7. The Board found that Mr. Riggins testified that the proposed garage cannot be turned since that would not allow sufficient room to back his trailer into the garage without driving on the neighbor's property.
8. The Board found that Mr. Riggins testified that the difficulty has not been created by him.
9. The Board found that Mr. Riggins testified that he needs the garage to house his tractor, tools, an eight (8) foot trailer, and a lawn mower.
10. The Board found that Mr. Riggins testified that the proposed garage will not alter the essential character of the neighborhood as there are similar garages and storage sheds in the area.
11. The Board found that Mr. Riggins testified that his neighbor has no objection to the Application.
12. The Board found that Mr. Riggins testified that the variance is the minimum variance to afford relief.
13. The Board found that Mr. Riggins testified that the proposed garage cannot be built on the opposite side of the Property since there is no access to that side of the Property from the road. The proposed garage will line up with his existing driveway.
14. The Board found that Mr. Riggins testified that the lean-to shown on the survey may not be constructed.

15. The Board found that Mr. Riggan testified that he could not move the garage to the east because he would not be able to drive to the garage door.
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 due to the location of the septic system which takes up a large portion of the rear yard. The septic system greatly limits the placement options for a detached garage. The area to place a garage which would be practical to use is also limited by the location of the driveway. If the driveway was located on the other side of the Property, perhaps a garage could be located on the other side of the house. As it stands, however, there is no practical location where the garage can be placed while still fitting within the building envelope. The Board notes that the existing physical conditions of the Property are unique and have created an exceptional practical difficulty for the Applicant.
  - b. Due to the uniqueness of the Property, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The location of the septic system, driveway, and dwelling have created an exceptionally limited area where a detached garage can be placed. The Board finds that a reasonably sized garage cannot be placed within the building envelope to comply with 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 reasonably sized detached garage to be constructed 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 location of the septic system, driveway, and dwelling have limited the building envelope for the Applicant. The septic system has posed a particular challenge as it is likely that a garage could be placed within the building envelope if the septic system did not take up so much of the rear yard of the Property. Ultimately, these unique physical conditions have resulted in a limited building envelope and have 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 will be a similar garage to others in the neighborhood and the drawing of the garage indicates that it will have a neat appearance. No complaints were noted in the record about its location and 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. Rather, the Board received a letter in support of the Application from the neighbor who would likely be most affected by the encroachment.
  - 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 construct a reasonably sized garage on the Property. The Board is convinced that the Applicant has taken steps to

limit the encroachment into the setback area while still being able to use the garage for storage of his tractor and equipment.

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, and Mr. Brent Workman. No Board Member voted against the Motion to approve the variance application. Mr. Norman Rickard did not participate in the discussion or vote of this 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 January 10, 2017