

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: JO ANNE ELLIOTT, EXECUTRIX OF THE

HAROLD HARTMAN ESTATE

(Case No. 12038)

A hearing was held after due notice on October 16, 2017. The Board members present were: Mr. Dale Callaway, Ms. Ellen Magee, Mr. Bruce Mears, Mr. John Mills, 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 1.9 feet from the five (5) feet side yard setback requirement on the southeast side for an existing garage. This application pertains to certain real property located at the northeast side of Baltimore Avenue, 215 feet northwest of Clubhouse Road (Road 351) (911 Address: 36751 Baltimore Avenue, Ocean View); said property being identified as Sussex County Tax Map Parcel Number 1-34-12.00-1088.00.

1. The Board was given copies of the Application, a survey of the Property dated July 26, 2017, and a portion of the tax map of the area.
2. The Board found that the Office of Planning & Zoning received no letters in support of or in opposition to the Application.
3. The Board found that Jo Anne Elliott was sworn in to testify about the Application.
4. The Board found that Ms. Elliott testified that she is Executrix of the Estate of her father, Harold Hartman. Mr. Hartman passed in June 2017 and his Last Will & Testament directed that his real estate located at 36751 Baltimore Avenue be sold
5. The Board found that Ms. Elliott testified that an agreement of sale was reached and the buyers obtained a survey which revealed that the garage encroaches into the side yard setback area.
6. The Board found that Ms. Elliott testified that the garage contains less than 600 square feet and is structurally sound.
7. The Board found that Ms. Elliott testified that the Property is unique as it is a small lot.
8. The Board found that Ms. Elliott testified that the garage was on the Property when her father purchased the Property in 1984 and has been located on the Property prior to the enactment of the Sussex County Zoning Code.
9. The Board found that Ms. Elliott testified that the garage has been in the same location for over thirty (30) years without complaint.
10. The Board found that Ms. Elliott testified that the variance is necessary to enable reasonable use of the Property.
11. The Board found that Ms. Elliott testified that the exceptional practical difficulty was not created by the Applicant.
12. The Board found that Ms. Elliott testified that the variance is needed to bring the Property into compliance with the Sussex County Zoning Code.
13. The Board found that Ms. Elliott testified that the garage has not altered the essential character of the neighborhood or been detrimental to the public welfare.
14. The Board found that Ms. Elliott testified that the variance requested is the minimum variance necessary to afford relief and represents the least modification of the regulation at issue.

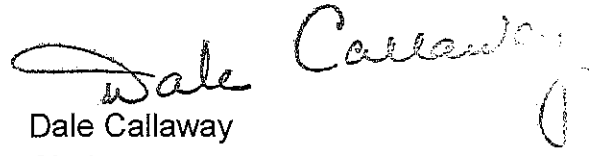
15. The Board found that no parties appeared in support of or in opposition to the Application.
16. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, which the Board found credible, persuasive, and un rebutted, the Board determined that 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 small lot; as is clearly shown on the survey. The small size of the Property has created a unique building envelope. The Board notes that the dwelling was previously serviced by a septic system which may have also limited the building envelope on the Property. The situation is also unique because the Property was developed many years ago with a garage. The un rebutted testimony confirms that the garage was on the Property prior to the enactment of the Sussex County Zoning Code. The Property's unique physical conditions have created an exceptional practical difficulty for the Applicant who seeks to retain the garage on the Property.
 - 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 many years ago and the Applicant seeks to retain the existing garage 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 is a small lot and, thus, has a small building envelope. This unique physical condition has created an exceptional practical difficulty for the Applicant. Likewise, the garage was constructed by a previous owner prior to the enactment of the Sussex County Zoning Code. The record is clear that the Applicant did not place the garage on the Property.
 - 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. Despite the longstanding location of the garage and notification to neighbors, no complaints were noted in the record about its location. Furthermore, 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 Applicant has demonstrated that the variance sought will allow the Applicant to retain the existing garage on the Property.

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, Ms. Ellen Magee, Mr. Bruce Mears, Mr. John Mills, 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 19, 2017.