

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: DAVID HERCHIK & RICHARD LOOMAN

(Case No. 12040)

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 Applicants are seeking a variance of 2.7 feet from the ten (10) feet side yard setback requirement on the southwest side for a proposed addition. This application pertains to certain real property located on the northwest side of Country Club Road, approximately 4,648 feet southwest of Coastal Highway (Route 1) (911 Address: 603 Country Club Road, Rehoboth Beach); said property being identified as Sussex County Tax Map Parcel Number 3-34-19.00-13.04.

1. The Board was given copies of the Application, a site plan of the proposed addition, dated July 11, 2017, a drawing of the proposed addition, 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 David Allen Herchik was sworn in to testify about the Application. Mr. Herchik submitted exhibits for the Board to review including a letter of no objection to the request.
4. The Board found that Mr. Herchik testified that the Applicants purchased the Property in 2009 and the existing home was moved to the Property between 2004 and 2006 by the Truitt family.
5. The Board found that Mr. Herchik testified that the dwelling is a farmhouse and the Applicants have restored the home. The Applicants propose to construct a garage addition.
6. The Board found that Mr. Herchik testified that the Property is narrow.
7. The Board found that Mr. Herchik testified that he suffers from leg problems and Mr. Looman suffers from vision problems. The proposed garage will accommodate a wheelchair.
8. The Board found that Mr. Herchik testified that the dwelling fits with the character of the neighborhood.
9. The Board found that Mr. Herchik testified that the garage needs to be as wide as proposed to allow for persons entering or exiting the vehicle to open the door safely without hitting a wall or another vehicle.
10. The Board found that Mr. Herchik testified that the garage will measure 24 feet wide and 27 feet deep. The garage will have a cinder block foundation.
11. The Board found that Mr. Herchik testified that the minimum width for a car in a garage is 11 feet.
12. The Board found that Mr. Herchik testified that the neighbor who submitted the letter of no objection lives to the southwest of the Property.
13. The Board found that Mr. Herchik testified that the addition will include additional living space to the rear of the garage. The addition will be two stories tall and will include a screened-in porch, living room, master bedrooms, and an office.
14. The Board found that Mr. Herchik testified that if an elevator was needed in the future, it would be located inside the structure.

15. The Board found that Mr. Herchik testified that the portion of the addition which is not being used for the garage could fit within the building envelope.
16. The Board found that Mr. Herchik testified that the main entrance to the house is located on the southwest side of the home.
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 as to the garage only. The findings below further support the Board's decision to approve the Application.
 - a. The Property is unique as it is a small, narrow lot; as is clearly shown on the survey. The small size of the Property has created an exceptional practical difficulty for the Applicants who seek to construct a garage which is wide enough to safely accommodate the entry and exit from vehicles. The Applicants also suffer from medical problems and a wider garage is necessary to allow the safe access from vehicles and for mobility around the garage. Their situation is quite unique and has exacerbated the difficulty caused by the small size of the lot.
 - b. Due to the uniqueness of the Property, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The dwelling was placed on the home years ago by a prior owner and the Applicants seek approval to construct a garage on the Property which will provide enough room to accommodate their cars while providing safe access to and from the vehicles. The Applicants are unable to construct such a garage within the building envelope due to the narrow width of the Property and the dwelling. 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 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 Applicants.
 - c. The exceptional practical difficulty was not created by the Applicants. The Property is an undersized lot with a narrow shape. The Applicants did not build the dwelling or create the size and shape of the lot. Rather, those conditions pre-existed the Applicants' acquisition of the Property. These unique physical conditions have resulted in a limited building envelope and have created the exceptional practical difficulty for the Applicants. The Board also notes that the Applicants also need the variance to allow for a garage that is wide enough to reasonably accommodate their disability.
 - 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 is reasonable in size and the neighbor who would be most affected by the garage has submitted a letter of no objection to the request. 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 Applicants have demonstrated that the variance sought will allow the Applicants to construct a reasonably sized garage that will allow them to safely enter and exit their vehicles.
 - f. The Board also finds that the Applicant suffers from a disability and that the variance approval represents a reasonable accommodation.

- g. The Board finds that the garage shall be no deeper than 27 feet.
19. 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 failed to meet the standards for granting a variance as to the rear addition only. The findings below further support the Board's decision to deny the Application for the rear addition.
- a. The Board finds that the rear addition can be constructed in strict conformity with the Sussex County Zoning Code and that the variance for the rear addition is not necessary for the reasonable use of the Property. The Applicant admitted that the rear addition could fit within the building envelope and there was no evidence presented which indicated that the Applicants could not reasonably fit that addition in the building envelope.
 - b. Since the variance for the rear addition is not necessary to enable the reasonable use of the Property, the Board also finds that the variance for the rear addition is not the minimum variance necessary to afford relief. Furthermore, the Board finds that no variance is necessary to afford relief since the rear addition can be constructed in strict conformity with the Sussex County Zoning Code.

The Board granted the variance application in part finding that it met the standards for granting a variance and denied the variance application in part finding that it failed to meet the standards for granting a variance.

Decision of the Board

Upon motion duly made and seconded, the variance application was approved in part and denied in part. The Board Members in favor of the motion to approve in part and deny in part 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 for the garage only and to deny the variance application as to the rear addition.

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.