

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: BRANDON BRITTINGHAM

(Case No. 12084)

A hearing was held after due notice on January 22, 2018. The Board members present were: Mr. Dale Callaway, Ms. Ellen Magee, Mr. Bruce Mears, and Mr. John Mills.

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 7.4 feet from the forty (40) feet front yard setback requirement for an existing garage. This application pertains to certain real property located on the east side of Brittingham Road, approximately 1,000 feet north of the intersection of Reynold Drive and Brittingham Road (911 Address: 28059 Brittingham Road, Delmar); said property being identified as Sussex County Tax Map Parcel Number 5-32-22.00-37.03.

1. The Board was given copies of the Application, a survey of the Property dated October 16, 2017, aerial photographs 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 Brock Parker was sworn in to testify about the Application. Mr. Parker submitted exhibits to the Board to review. The exhibits included responses to the variance standards, aerial photographs, a survey of the Property, and a deed to the Property.
4. The Board found that Mr. Parker testified that the variance request is for an existing garage.
5. The Board found that Mr. Parker testified that the garage was constructed prior to 2005 and that an aerial photograph from 2005 clearly shows the garage on the Property. The garage was constructed too close to the front property line.
6. The Board found that Mr. Parker testified that the Applicant purchased the Property at a foreclosure sale in the summer of 2017 and the Applicant learned of the encroachment after a survey of the Property was prepared.
7. The Board found that Mr. Parker testified that the garage was placed on the Property by a prior owner.
8. The Board found that Mr. Parker testified that the removal of the encroaching portion of the garage would require the garage to be reconstructed due to its age.
9. The Board found that Mr. Parker testified that the Property is triangularly shaped.
10. The Board found that Mr. Parker testified that the Property cannot otherwise be developed.
11. The Board found that Mr. Parker testified that the Applicant did not create the need for the variance.
12. The Board found that Mr. Parker testified that the variance will not alter the essential character of the neighborhood.
13. The Board found that Mr. Parker testified that a structure on a lot across the street is significantly closer to the road than the subject garage.
14. The Board found that Mr. Parker testified that the variance requested is the minimum variance necessary to afford relief.
15. The Board found that Mr. Parker testified that the Applicant has no plans to enlarge the garage.

16. The Board found that Mr. Parker testified that there is approximately 20 feet from the edge of paving of the adjacent road to the front property line.
17. The Board found that Mr. Parker testified that the Property is served by well and septic and those systems are located in the building envelope.
18. The Board found that Mr. Parker testified that there have been no complaints from neighbors about the garage.
19. The Board found that no parties appeared in support of or in opposition to the Application.
20. 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 clearly unique as it is a triangularly shaped lot with an odd building envelope. This unique shape greatly limits the building envelope of the Property. The building envelope is further limited by the location of a well and septic system. These unique physical conditions have created an unusual and limited building envelope for the Applicant 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 unique shape of the Property and the location of the well and septic system greatly limit the building envelope. The Applicant seeks to retain a garage of a reasonable size but is unable to do so without violating the Sussex County Zoning Code. The garage cannot be located elsewhere on the lot. 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 an unusual shape and is further subject to building limitations due to the well and septic system. These conditions have greatly constrained the building envelope on the Property and these unique physical conditions have created the exceptional practical difficulty for the Applicant. The Applicant also did not construct the garage. Rather, the Applicant purchased the Property in 2017 yet the garage has been on the Property since at least 2005.
 - 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 front property line is at least 20 feet away from the edge of paving of Brittingham Road and it is unlikely that the encroachment would be noticed. Notably, a structure on a neighboring property is closer to Brittingham Road. Despite the fact that the garage has been on the Property for many years and neighbors were notified of this variance request, no complaints were noted in the record about the garage. 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. No additions or modifications to the garage are 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, Ms. Ellen Magee, Mr. Bruce Mears, and Mr. John Mills. No Board Member voted against the Motion to approve the variance application. Mr. Brent Workman did not participate in the discussion or vote on 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 March 6, 2018