

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

**IN RE: CHARLES E. WALLS, JR. & PRISCILLA J. WALLS**

**(Case No. 12104)**

A hearing was held after due notice on February 19, 2018. The Board members present were: Mr. Dale Callaway, Mr. Bruce Mears, Mr. John Mills, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for variances from the front yard and side yard setback requirements.

Findings of Fact

The Board found that the Applicants are seeking a variance of 3.3 feet from the five (5) feet side yard setback requirement on the northwest side for an existing accessory structure, a variance of 3.6 feet from the five (5) feet side yard setback requirement on the northwest side for an existing accessory structure, a variance of 3.4 feet from the five (5) feet side yard setback requirement on the west side for an existing accessory structure, a variance of 3.9 feet from the five (5) feet side yard setback requirement on the west side for an existing accessory structure, a variance of 8 feet from the ten (10) feet side yard setback requirement on the northwest side for a proposed garage, a variance of 8 feet from the ten (10) feet side yard setback requirement on the west side for a proposed garage, and a variance of 7.5 feet from the ten (10) feet side yard setback requirement on the northeast side for an existing dwelling with a proposed addition. This application pertains to certain real property located on the east end of Pearl Street, approximately 384 feet southeast of the intersection of Delaware Avenue and Pearl Street (911 Address: 33193 Pearl Street, Millsboro); said property being identified as Sussex County Tax Map Parcel Number 2-34-35.05-110.00.

1. The Board was given copies of the Application, photographs of the Property, property assessment records, Certificates of Compliance, an aerial photograph of the Property, a survey of the Property dated August 29, 2017, 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 Charles Drummond was sworn in to testify about the Application. William Schab, Esquire, presented the case on behalf of the Applicants.
4. The Board found that Mr. Schab stated that the Applicants are Mr. Drummond's mother and stepfather and the Applicants will be transferring the Property to Mr. Drummond.
5. The Board found that Mr. Schab stated that the Property is unusually shaped as it is shaped like a rifle and every structure on the Property requires a variance.
6. The Board found that Mr. Schab stated that the Applicants purchased the Property in March 2017 and, after the Applicants purchased the Property, the Applicants worked with Mr. Schab to determine how to make the Property useful while minimizing the need for variances.
7. The Board found that Mr. Schab stated that the existing garage is a standalone building but is very close to the dwelling and lines up with the dwelling. The garage and the dwelling are currently 2.5 feet from the north side property line. The garage is in poor condition and needs to be totally renovated. The Applicants propose to add the existing garage to the home.

8. The Board found that Mr. Schab stated that the proposed renovation will turn the 2 structures into 1 structure but will not encroach farther into the side yard setback area. The renovation will lead to an expansion of the dwelling.
9. The Board found that Mr. Schab stated that the Applicants propose to construct a new garage as shown on the site plan and there is no other location on the Property where the garage could be located and be reasonably used.
10. The Board found that Mr. Schab stated that all existing structures were built prior to the enactment of the Sussex County Zoning Code and the structures are in poor condition.
11. The Board found that Mr. Schab stated that other variances have been granted in the area.
12. The Board found that Mr. Schab stated that the Applicants did not create the exceptional practical difficulty and the Property cannot be developed in strict conformity with the Sussex County Zoning Code.
13. The Board found that Mr. Schab stated that the variances requested are the minimum variances necessary to afford relief and the variances are necessary to enable the reasonable use of the Property.
14. The Board found that Mr. Schab stated that there is also a shed on the Property which needs variances and there is no other location where the shed can be located.
15. The Board found that Mr. Drummond affirmed the statements made by Mr. Schab as true and correct.
16. The Board found that Mr. Drummond testified that the Property was used as a vacation home by the prior owner and he intends to use this Property as a permanent residence and his parents intend to move in with him.
17. The Board found that Mr. Drummond testified that the addition to the home will afford them space for his parents to move around.
18. The Board found that Mr. Drummond testified that he has been working on the project for some time.
19. The Board found that Mr. Drummond testified that the proposed garage will be a two-story garage. The first floor will be used to store vehicles and the second floor will be used for other storage.
20. The Board found that Mr. Drummond testified that the shed stores garden tools and a lawn mower.
21. The Board found that Mr. Drummond testified that Pearl Street is a private road used by 5 properties and the structures do not block access to Pearl Street.
22. The Board found that Brooke Lloyd and Mike Smith were sworn in and testified in opposition to the Application.
23. The Board found that Ms. Lloyd testified that she owns Lot 111.02 which is located on Pearl Street and she is selling her lot. She does not oppose the variance for the dwelling or the shed but she has concerns about the proposed garage because she has water views and the garage will block her water views. She does not oppose a single-story garage.
24. The Board found that Mr. Smith testified that he also has concerns about the height of the garage and the maintenance of Pearl Street. He is also opposed to a two-story garage but does not oppose a single-story garage.
25. The Board found that no parties appeared in support of the Application.
26. The Board found that two (2) parties appeared in opposition to the Application.
27. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, which the Board weighed and considered, 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 narrow and unusually shaped lot. The uniqueness of the lot is abundantly clear from the survey. The Property is ten (10) feet wide at the front yard and only 57.97 feet wide in the rear yard. Much of the front yard is also used as a private road used by the Applicants and their neighbors. Consequently, the Property has a small and unusually shaped building envelope. These unique physical conditions have created an exceptional practical difficulty for the Applicants who seek to retain existing structures and to make improvements to 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 Property was created many years ago and the dwelling, garage, and shed have been on the Property prior to the enactment of the Sussex County Zoning Code. The Applicants seek to retain the home and shed on the Property but are unable to do so without violating the Sussex County Zoning Code. Likewise, the Applicants seek to make reasonable improvements to the dwelling by combining an existing detached garage to the dwelling and erecting a new garage near the side property line. The Board is convinced that the variances are necessary to enable the reasonable use of the Property as the variances will allow the existing dwelling and shed to remain on the Property and for the Applicants to make reasonable improvements. The Board is convinced that the size, shape, and location of these structures are reasonable, which is confirmed when reviewing the survey and pictures provided by the Applicants.
- c. The exceptional practical difficulty was not created by the Applicants. The Property was created and developed many years ago and is a narrow and unusually shaped lot. The Board notes that the narrowness of the lot greatly limits the building envelope. The front portion of the lot is also unusable due to the existing easement. The Applicants did not create the size and shape of the lot. Rather, those conditions pre-existed the Applicants' acquisition of the Property. Furthermore, the Applicants did not place the existing garage, dwelling, or shed on the Property. These structures have been on the Property for many years and are in poor condition. Ultimately, the Property's unique physical conditions have resulted in a limited building envelope and have created the exceptional practical difficulty for the Applicants.
- d. The variances 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 home, garage, and shed have been on the Property for many years and, despite their longstanding location and notice to neighbors, no evidence was presented which would indicate that the variances for the dwelling (and its proposed addition) and the shed would somehow alter the essential character of the neighborhood or be detrimental to the public welfare. This lack of evidence is telling since the Board would expect some evidence if the structures had altered the essential character of the neighborhood. The opposition's only expressed concerns were about the proposed garage and those concerns focused on the impact of the garage on their views of Indian River. The opposition did not oppose a single-story garage. The Board was simply not convinced by the opposition's arguments that a two-story garage would somehow alter the essential character of the neighborhood or substantially or permanently impair the appropriate use or development of adjacent property, or be detrimental to the public welfare when a single-story garage would not.

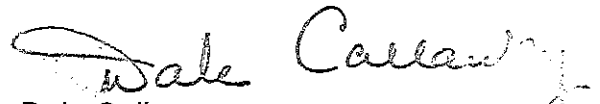
- e. The variances sought are the minimum variances necessary to afford relief and the variances requested represent the least modifications possible of the regulations at issue. The Applicants have demonstrated that the variances sought will allow the Applicants to retain a reasonably sized shed and to expand a small dwelling and to erect a garage on the lot and that those structures are consistent with the neighborhood. The Board notes that the Applicants have worked with their attorney to find ways to minimize the encroachments on the Property but they have been greatly limited by the Property's unique physical conditions.

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. Bruce Mears, Mr. John Mills, and Mr. Brent Workman. No Board Member voted against the Motion to approve the variance application. Ms. Ellen Magee 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 two (2) years from the date below the application becomes void.

Date April 17, 2018