

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: ANTHONY CRIVELLA

(Case No. 12105)

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 a variance from the front yard and rear yard setback requirement.

Findings of Fact

The Board found that the Applicant is seeking a variance of 23.3 feet from the forty (40) feet front yard setback requirement for an existing dwelling and porch and a variance of 13.0 feet from the twenty (20) feet rear yard setback requirement for a proposed garage. This application pertains to certain real property located on the north side of Beaver Dam Road (Road 23), approximately 1,714 feet southwest of the intersection of Belltown Road and Beaver Dam Road (Road 23). (911 Address: 17822 Beaver Dam Road, Lewes); said property being identified as Sussex County Tax Map Parcel Number: 3-34-5.00-182.00.

1. The Board was given copies of the Application, a portion of the tax map of the area, an aerial photograph of the Property, and a survey of the Property dated January 6, 2017.
2. The Board found that the Office of Planning & Zoning received no correspondence in support of the Application and one (1) letter in opposition to the Application.
3. The Board found that Anthony Crivella was sworn in to testify about the Application.
4. The Board found that Mr. Crivella testified that he purchased the Property a year ago.
5. The Board found that Mr. Crivella testified that the Sussex County Tax Maps indicate that the Property measures 80 feet wide by 170 feet deep but he ordered a survey and learned that the Property measures 55 feet wide by 160 feet deep. He believes that, if the Property was as large as he originally believed, no variance would be needed.
6. The Board found that Mr. Crivella testified that the house is an old house built in the 1920s and that he plans to restore it.
7. The Board found that Mr. Crivella testified that he proposes to build a detached garage in the rear yard. The garage will be built close to the rear yard property line so that he has enough room to turn a vehicle in the rear yard. He is concerned about having enough space to turn a vehicle if the garage is parked closer to the house.
8. The Board found that Mr. Crivella testified that the Property is located along Beaver Dam Road, which is a busy road. There is a gap of 2-3 feet between the front property line and the edge of paving of Beaver Dam Road.
9. The Board found that Mr. Crivella testified that there is a buffer of 12-15 feet between his rear property line and the fence for the adjacent Lewes Crossing community. He maintains the buffer area. There is an additional buffer of 15-30 feet on the other side of the fence to the nearest neighboring lot in the rear.
10. The Board found that Mr. Crivella testified that he also has a small trailer to park in the garage.
11. The Board found that Mr. Crivella testified that he could build a smaller garage up to 5 feet from the property line but his truck is longer than 20 feet and he needs the additional room of the garage for his vehicles.

12. The Board found that Mr. Crivella testified that he wants a two-car garage rather than a single-car garage. The garage will be 10 feet tall and is a single-story garage. He looked at smaller garages.
13. The Board found that Mr. Crivella testified that, if the variance is not approved, he will move the garage away from the rear property line.
14. The Board found that Mr. Crivella testified that the Property is unique because it is narrower than most AR-1 zoned lots and the Property is angled and slopes to the rear.
15. The Board found that Mr. Crivella testified that he is trying to maximize the use of the Property.
16. The Board found that Mr. Crivella testified that he did not create the lot.
17. The Board found that Mr. Crivella testified that the variances will not affect the neighborhood.
18. The Board found that Mr. Crivella testified that there are other sheds closer to property lines in the neighborhood.
19. The Board found that Mr. Crivella testified that the variances requested are the minimum variances necessary to afford relief.
20. The Board found that Mr. Crivella testified that the Property is serviced by public water and sewer.
21. The Board found that Mr. Crivella testified that anything can be made to work but he wanted some additional space in the garage.
22. The Board found that Gene Modzelewski, Susan Malec, and Fred Scott were sworn in to testify in opposition to the Application.
23. The Board found that Mr. Modzelewski testified that he owns the property directly to the rear of the Property. His lot is located in Lewes Crossing and he understood that the community consisted of single-family dwellings.
24. The Board found that Mr. Modzelewski testified that the Applicant's house was built in 1921 and does not have a garage. The Applicant's house consists of 900 square feet but the proposed garage will consist of 1,088 square feet and will be 7 feet from the rear property line.
25. The Board found that Mr. Modzelewski testified that Lewes Crossing has a drainage easement adjacent to the rear of the Property.
26. The Board found that Mr. Modzelewski testified that the structure is out of character for the neighborhood.
27. The Board found that Mr. Modzelewski testified that he owns a truck and he can fit the truck in his garage and his garage measures 19 feet by 20 feet. His neighbors have similar sized trucks.
28. The Board found that Mr. Modzelewski testified that a neighboring property is a commercial property with a garage. The garage on that property appears to meet the setback requirements and trucks using the garage appear to have no difficulty moving in and out of the garage.
29. The Board found that Mr. Modzelewski testified that he believes the proposed garage will have a negative impact on his property.
30. The Board found that Mr. Modzelewski testified that he assumes that the garage will be used for oversized commercial vehicles due to the height of the garage and he is concerned about commercial use in the neighborhood.
31. The Board found that Mr. Modzelewski testified that there is a significant amount of room on the Property for a detached garage.
32. The Board found that Mr. Modzelewski testified that there are 5 or 6 storage sheds on properties along Beaver Dam Road which appear to meet the rear setback requirement.
33. The Board found that Mr. Modzelewski testified that the only similarly sized structure to the proposed garage is a structure located on a commercial property which he believes is a pre-existing use.

34. The Board found that Ms. Malec testified that she agrees with Mr. Modzelewski's testimony.
35. The Board found that Ms. Malec testified that her garage measures 458 square feet and fits 2 cars.
36. The Board found that Ms. Malec testified that her husband owns an F-250 truck and she can turn it around in an area less than 68 feet deep.
37. The Board found that Ms. Malec testified that Beaver Dam Road is a busy road but the Applicant can back out of it.
38. The Board found that Ms. Malec testified that she is concerned about outside lighting.
39. The Board found that Ms. Malec testified that that her property is located to the rear of the Property
40. The Board found that Mr. Scott testified that he owns property to the rear of the Property and his property is located in Lewes Crossing. He supports restoration of dwellings along Beaver Dam Road but is concerned about the garage and its use.
41. The Board found that no parties appeared in support of the Application.
42. The Board found that five (5) parties appeared in opposition to the Application.
43. 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 failed to meet the standards for granting a variance. The findings below further support the Board's decision to deny the Application.
 - a. The Board was not convinced that the Property could not be developed in strict conformity with the Sussex County Zoning Code and that a variance was necessary to enable reasonable use of the Property. The Applicant proposes to construct a large, two-car garage in the rear of the lot. The garage would be located 7 feet from the rear property line and approximately 68 feet from the existing dwelling. The Applicant intends to use the garage for his truck and a trailer. The Applicant claims that the garage must be located so close to the rear property line so that he would have enough room to turn a vehicle around. The Board, however, was not convinced by the Applicant's argument that a garage placed in compliance with the setback requirements would not provide him with enough space to turn around his vehicles. Neighbors have testified that they turn around similarly sized vehicles in smaller areas without issue. Furthermore, the Applicant even admitted he could build the garage in compliance with the Code. The Board was not convinced that a garage which would otherwise meet the Code requirements would not afford the Applicant with reasonable use of a garage. The Applicant's desire for the variance clearly appears to be a "want" rather than a "need."
 - b. The exceptional practical difficulty was created by the Applicant. As previously discussed, the Applicant can construct the garage in strict conformity with the Sussex County Zoning Code. There are no unique conditions to the Property which would limit its placement elsewhere on the Property. Notably, there is a significant distance between the dwelling and the rear yard property where the garage could be located. The Property is serviced by public water and sewer so there is no well or septic system which could otherwise limit its placement. The difficulty, if any, appears to be entirely self-created by the Applicant's desire to exceed the setback requirements set forth in the Sussex County Zoning Code. The Applicant can clearly use the Property without the need for a variance for the garage.
 - c. The Board has concerns about the impact of the garage on the adjacent property. As proposed, the garage would be 7 feet away from neighboring

properties and the Board finds the testimony of the neighboring property owners convincing that the proximity of the garage so close to the property line is out of character for the neighborhood.

- d. Since the variance for the garage is not necessary to enable the reasonable use of the Property, the Board also finds that the variance requested is not the minimum variance necessary to afford relief. Furthermore, the Board finds that no variance is necessary to afford relief since the Property can be developed by a garage in strict conformity with the Sussex County Zoning Code.

The Board denied the variance application 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 denied. The Board Members in favor of the Motion to Deny were Mr. Dale Callaway, Mr. Bruce Mears, Mr. John Mills, and Mr. Brent Workman. No Board Member voted against the Motion to deny 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

Date April 17, 2018