

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: STACEY MALONEY

(Case No. 12125)

A hearing was held after due notice on April 16, 2018. The Board members present were: Mr. Dale Callaway, Mr. Bruce Mears, Ms. Ellen Magee, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for a variance from the corner front yard setback requirement.

Findings of Fact

The Board found that the Applicant is seeking a variance of 8.3 feet from the fifteen (15) feet corner front yard setback requirement along Breezewood Drive for an existing garage. This application pertains to certain real property located on the southwest corner of Breezewood Drive and Whisperwood Lane (911 Address: 131 Whisperwood Lane, Rehoboth Beach); said property being identified as Sussex County Tax Map Parcel Number 3-34-13.00-231.00.

1. The Board was given copies of the Application, a survey of the Property dated January 8, 2018, minutes from Case No. 7036, pictures, property assessment information, an aerial photograph of the Property, a building permit application, and a portion of the tax map of the area.
2. The Board found that the Office of Planning & Zoning received one (1) letter in support of the Application and no correspondence in opposition to the Application.
3. The Board found that Doug Griffin was sworn in to testify about the Application and submitted exhibits to the Board to review.
4. The Board found that Mr. Griffin testified that the Applicant has owned the Property since 2006 and the Applicant did not build the house. The house is a modular home with an attached garage which measures 24 feet by 24 feet. The garage is located off an existing driveway.
5. The Board found that Mr. Griffin testified that the Property narrows towards the rear. The rear corner of the garage is closer to the property line than the front corner of the garage.
6. The Board found that Mr. Griffin testified that the Applicant believed the property line was closer to the edge of paving of Breezewood Drive.
7. The Board found that Mr. Griffin testified that there are trees between the garage and Breezewood Drive. There is approximately 13-15 feet from the trees to the edge of paving and there is approximately 20-22 feet from the garage to the edge of paving of Breezewood Drive.
8. The Board found that Mr. Griffin testified that the difficulty was not created by the Applicant.
9. The Board found that Mr. Griffin testified that no survey was ordered prior to construction of the garage but the Property was surveyed after the garage was built.
10. The Board found that Mr. Griffin testified that most houses in the development have garages and a house with a garage looks more in character with the neighborhood.
11. The Board found that Mr. Griffin testified that the location of the garage is the only place where it could be located.
12. The Board found that Mr. Griffin testified that the garage does not create any visibility issues along Breezewood Drive.
13. The Board found that no parties appeared in support of or in opposition to the Application.

14. 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 corner lot with a curved property line at the intersection of Breezewood Drive and Whisperwood Lane. The dwelling was constructed at the appropriate setback distances from those roads but the dwelling had no garage. An attached garage was later constructed on the lot. The Property has a unique shape as it is narrower in the rear yard and has a curved front and side property line. This shape has created an oddly shaped building envelope which is exacerbated by the fact that the lot is also a corner lot subject to an additional corner yard setback requirement. These conditions have limited the building envelope of the Property and have created an exceptional practical difficulty for the Applicant who seeks to retain a small, attached 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 Applicant seeks to retain a small, attached garage adjacent to the existing dwelling 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 a reasonably sized garage to remain on the Property. The garage provides the Applicant with additional storage and is consistent with other garages in the neighborhood. The Board is convinced that the shape and location of the garage are also reasonable, which is confirmed when reviewing the survey provided by the Applicant. The location of the garage allows for reasonable access to Whisperwood Lane as it is adjacent to an existing driveway. Based on the survey, there appears no other location where the garage could be located.
 - c. The exceptional practical difficulty was not created by the Applicant. There was no evidence that the Applicant created the lot and its unique shape. This unique condition has created an unusually shaped and limited building envelope which is further limited by the corner yard setback requirement. These conditions have created the exceptional practical difficulty for the Applicant who seeks to retain a reasonably sized garage on the lot. The Applicant also did not develop the lot with the existing dwelling. The location of the existing dwelling constrained the garage's possible placement options.
 - 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 Board is convinced that the garage will have no effect on the character of the neighborhood. The garage is similar to other garages in the neighborhood and the pictures demonstrate that the garage is an attractive structure. The garage is also located approximately 20-22 feet from the edge of paving of Breezewood Drive so the encroachment into the corner front yard setback area is likely difficult to notice and would not likely present visibility concerns. 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 a reasonably sized garage on the

Property. The garage is located adjacent to the existing dwelling and there is no other place where it could reasonably be located. 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. Brent Workman. No Board Member voted against the Motion to approve the variance application. Mr. John Mills 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 June 19, 2018