

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: LOLA ANN PLUMMER

(Case No. 12126)

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 variances from the side yard setback requirement.

Findings of Fact

The Board found that the Applicant is seeking a variance of 7.4 feet from the fifteen (15) feet side yard setback requirement on the west side for an existing detached garage and a variance of 7.6 feet from the fifteen (15) feet side yard setback requirement on the west side for an existing detached garage. This application pertains to certain real property located on the west side of Discount Land Road, approximately 270 feet south of Camp Road (Road 470) (911 Address: 29014 Discount Land Road, Laurel); said property being identified as Sussex County Tax Map Parcel Number 2-32-6.00-48.01.

1. The Board was given copies of the Application, a building permit application, a survey of the Property dated January 11, 2018, an aerial photograph 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 Lola Ann Plummer and Felicia Culver were sworn in to testify about the Application.
4. The Board found that Ms. Plummer testified that the Property was bought in the 1950s by her family. Ms. Plummer owns adjacent property and Ms. Culver also owns a neighboring property.
5. The Board found that Ms. Plummer testified that the property lines are unusual and that the Property is narrow and oddly shaped.
6. The Board found that Ms. Plummer testified that there is no place to put a garage due to the existing trees. There are approximately 20 trees on the Property.
7. The Board found that Ms. Plummer testified that the garage is a three-car garage and is located in the rear of the Property. The garage is hidden by the existing landscape.
8. The Board found that Ms. Plummer testified that the Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code and there is no other place where the garage could be located.
9. The Board found that Ms. Plummer testified that she did not create the exceptional practical difficulty.
10. The Board found that Ms. Plummer testified that the variances will not alter the essential character of the neighborhood.
11. The Board found that Ms. Culver testified that she cannot see the building from her yard and that the garage is located in the best possible location.
12. The Board found that Ms. Plummer testified that the variances requested are the minimum variances necessary to afford relief.
13. The Board found that Ms. Plummer testified that the garage has been constructed but her contractor told her to get a variance after the garage was built.
14. The Board found that Ms. Plummer testified that the septic system and drain field are located in the middle of the yard and limit the building envelope.

15. The Board found that Ms. Plummer testified that it would be impossible to back an 8 foot by 10 foot trailer into the building if the structure were built within the building envelope.
16. The Board found that Ms. Plummer testified that there is no possibility the Property can be developed in strict conformity with the Sussex County Zoning Code.
17. The Board found that Ms. Plummer testified that the variances are necessary to enable reasonable use of the Property and that the variances will not alter the character of the neighborhood because the building is located next to woods and is surrounded by dwellings and farmland.
18. The Board found that one (1) party appeared in support of the Application.
19. The Board found that no parties appeared 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 unique due to its shape as is evidenced by the survey. The rear of the Property has a panhandle shape and this shape has created an odd area in the northwest corner of the Property. The Property is also serviced by a septic system which limits the buildable area of the lot. The buildable area is further reduced by the fact that the Property is heavily wooded. Ultimately, the unique characteristics of this Property limit the buildable area available to the Applicant and have created an exceptional practical difficulty for the Applicant who seeks to retain an existing garage on the lot.
 - b. Due to the uniqueness of the lot, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property has a unique shape and the buildable area thereof is limited due to the lot's shape, the trees, and the septic system. The Applicant seeks to retain a garage of reasonable size but is unable to do so without violating the Sussex County Zoning Code. The Board is convinced that the variances are necessary to enable the reasonable use of the Property as the variances will allow the garage to remain on the Property. 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.
 - c. The exceptional practical difficulty was not created by the Applicant. The Applicant did not create the unusual shape of the Property or plant the trees or create the septic issues. These unique conditions have resulted in a limited building envelope on the Property and the small building envelope has created the exceptional practical difficulty. The unique shape of the Property is clear when reviewing the survey. The Board is convinced that the exceptional practical difficulty was not created by the Applicant but was created the lot's unique characteristics. Furthermore, the Applicant relied on a builder to construct the garage in compliance with the Sussex County Zoning Code only to later find out about the encroachments.
 - 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 Board is convinced that the garage will have no effect on the character of the neighborhood. The un rebutted testimony demonstrates that the garage is hidden and difficult to see from neighboring lands. No evidence was presented that the variances would somehow alter the essential character of the neighborhood. The Board also notes that the Applicant owns the neighboring property which would most be impacted by the encroachment.

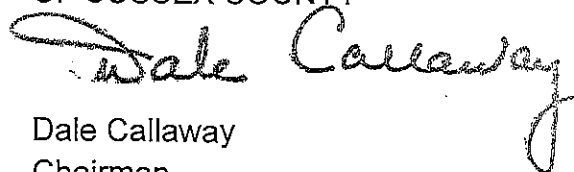
- e. The variances sought are the minimum variances necessary to afford relief and the variances requested represent the least modifications possible of the regulations at issue. The Applicant has demonstrated that the variances sought will allow the Applicant to retain this reasonably sized garage on the Property. The Board is convinced that the Applicant explored other options within the building envelope but was constrained by the Property's unique 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, 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