

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: DAVID POPOVICH

(Case No. 12135)

A hearing was held after due notice on May 7, 2018. The Board members present were: Mr. Dale Callaway, Mr. Bruce Mears, Mr. John Mills, Ms. Ellen Magee, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for a Variance from side yard setback for an existing structure (Sections 115-25 and 115-185 of the Sussex County Zoning Ordinance).

Findings of Fact

The Board found that the Applicant is seeking a variance of 3.9 feet from the fifteen (15) feet side yard setback requirement on the northwest side for an existing garage on a parcel of land zoned AR-1 Agricultural Residential. The property is identified as Sussex County Tax Map and Parcel Number 3-34-6.00-855.00, with a 911 address of 37 Gainsborough Drive, Lewes, Delaware.

After the hearing, the Board made the following finding of fact:

1. The Board was given copies of the Application, a survey of the property, and a portion of the tax map of the area.
2. Jennifer Walls, of Sussex County, described the case and stated that the Office of Planning and Zoning has received no correspondence concerning the application.
3. The Board found that David Popovich and Cynthia Popovich were sworn in and testified that he is seeking a variance from the side yard setbacks. Mr. Popovich submitted a letter of support from his neighbor.
4. The Board found that David Popovich testified that they are seeking a variance of 3.9 feet from the 15 foot side yard setback for an existing detached garage.
5. The Board found that David Popovich testified that the variance is for a building that was constructed in September 2016 to replace an older shed.
6. The Board found that David Popovich testified that a contractor located the garage in incorrect spot too close to his property line and that it is now fully constructed.
7. The Board found that David Popovich testified that the building is constructed on a concrete slab, with electric and water service to it, making it very difficult to move.
8. The Board found that David Popovich testified that he learned of the existing encroachment after the garage was constructed, and through a notice of violation that he received in 2017.
9. The Board found that David Popovich testified that the garage matches the home with the same siding and shingles, and that the building enhances the property.
10. The Board found that David Popovich testified that the need for the variance and the exceptional practical difficulty was not created by him.
11. The Board found that David Popovich testified that the variance for the existing structure will not alter the character of the neighborhood.
12. The Board found that David Popovich testified that the variance is the minimum necessary to afford relief.
13. The Board found that David Popovich testified that the existing garage cannot be brought into compliance without destroying it.
14. The Board found that David Popovich testified that the property is unique due to its irregular shape.
15. The Board found that no parties appeared in support of or in opposition to the Application.
16. Based on the findings above and the testimony and evidence presented during the Public Hearing and contained in the Public Record, the Board determined that the Variance from the side yard setback should be granted. The findings below further support the Board's decision to grant the Variance Application:
  - a. The proposed variance is for an existing structure, a garage, on the premises. While the garage was improperly located by the Applicant's contractor, the Applicant had no knowledge of the mistake.

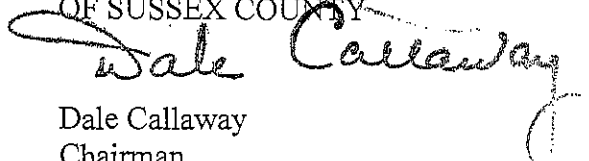
- b. The lot is a unique shape, making placement of this structure more difficult than a rectangular lot.
- c. The variance is necessary to enable the reasonable use of the Property and will allow the garage to legally remain upon the property in their current location.
- d. The exceptional practical difficulty was not created by the Applicant.
- e. The variance is the minimum necessary to afford relief and it represents the least modification possible of the regulation at issue. The variance simply allows the current structure to remain in its present location.
- f. Removal or relocation of the garage would be extremely difficult due to the fact that it is constructed on a concrete slab with water and electrical service. Moving the garage outweighs any harm caused by the encroachment.

Based on the foregoing, the Board approved the variance of the 3.9 feet from the 15 foot side yard setback pursuant to Section 115-25 and 115-185 of the Sussex County Zoning Code.

Decision of the Board

Upon motion duly made and seconded, the variances from the side yard setback pursuant to Section 115-25 and 115-185 of the Sussex County Zoning Code was approved. The Board Members in favor of the approval were Mr. Dale Callaway, Mr. Bruce Mears, Mr. John Mills, Ms. Ellen Magee and Mr. Brent Workman.

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 July 10, 2018