

**BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY  
IN RE: EDWARD SOCHUREK & CHRISTINE SOCHUREK**

**(Case No. 12148)**

A hearing was held after due notice on June 4, 2018. The Board members present were: Mr. Dale Callaway, Mr. Bruce Mears, Ms. Ellen Magee, Mr. John Mills, and Mr. Brent Workman.

Nature of the Proceedings

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

Findings of Fact

The Board found that the Applicants are seeking a variance of 19.8 feet from the forty (40) feet front yard setback requirement along Falling Point Road for an existing garage. This application pertains to certain real property located on the north end of Central Park Circle, between Central Park Circle and Falling Point Road. (911 Address: 35655 Central Park Circle, Dagsboro); said property being identified as Sussex County Tax Map Parcel Number 1-34-6.00-342.00.

1. The Board was given copies of the Application, an email from the Management for the Cove at Sandy Landing, survey of the Property dated December 18, 2017, a building permit application, 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 one (1) letter in support of the Application and no correspondence in opposition to the Application.
3. The Board found that Jan Edward Sochurek and Bob Brooks were sworn in testify about the Application and submitted exhibits for the Board to review.
4. The Board found that Mr. Brooks testified that the house was set according to the homeowners association architectural review regulations and the homeowners association requires the dwelling to be forty (40) feet from the front property line which is Central Park Circle. The homeowners association deed restrictions also state that the rear yard setback is twenty (20) feet from the rear property line.
5. The Board found that Mr. Brooks testified that Miller Lewis, Inc., staked out the placement for the buildings.
6. The Board found that Mr. Brooks testified that he never received a copy of the building permit.
7. The Board found that Mr. Brooks testified that there is no room on the Property to place the garage.
8. The Board found that Mr. Brooks testified that a large septic system limits the size of the building envelope.
9. The Board found that Mr. Brooks testified that the dwelling faces Central Park Circle and there is no access from Falling Point Road. There is about fifteen to twenty feet from the property line to the edge of paving of Falling Point Road.
10. The Board found that Mr. Brooks testified that the garage has been finished.
11. The Board found that Mr. Sochurek testified that he had no idea the property was a through lot and that he relied on the builder to place the garage and the surveyor to stake the lot.
12. The Board found that Mr. Sochurek testified that the garage presents no visibility concerns and that trees line Sandy Landing Road.
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, through lot with a curved property line. The Property fronts on Central Park Circle and is adjacent to Sandy Landing Road (which is considered a corner front yard) and Falling Point Road (which is also considered a front yard). These multiple frontages have created a limited building envelope which is further limited by the fact that the septic system takes up a significant portion of the yard. The dwelling was constructed at the appropriate setback distances from those roads but the dwelling had no garage. A detached garage was also constructed on the lot. The Property has a unique shape as it is narrower in the rear yard and has a curved front 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 Applicants who seek to retain a small, detached garage on the Property. The Board also notes that the Property has no direct access to Falling Point Road. Rather, the Property is accessed from Central Park Circle.
- b. Due to the uniqueness of the Property, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Applicants seek to retain a small, detached garage but are 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 Applicants with additional storage. 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 Applicants. 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 Applicants. There was no evidence that the Applicants 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 and through lot setback requirements. These conditions have created the exceptional practical difficulty for the Applicants who seek to retain a reasonably sized garage on the lot. The Applicants also relied upon their builder and surveyor to properly lay out the buildings only to later discover this encroachment.
- 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 also located approximately 20.2 from the rear property line and there is approximately 15-20 feet from the edge of paving of Falling Point Road so the encroachment into the 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 Applicants have demonstrated that the variance sought will allow the Applicants to retain a reasonably sized garage on the Property. Due to the uniqueness of the Property, there is no other place

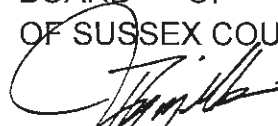
where it could reasonably be located. No additions or modifications to the garage are proposed.

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, Mr. John Mills, and Mr. Brent Workman. No Board Member voted against the Motion to approve the variance application.

BOARD OF ADJUSTMENT  
OF SUSSEX COUNTY



John Mills  
Chairman

If the use is not established within two (2) years from the date below the application becomes void.

Date August 7, 2018