

**BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY**

**IN RE: THEODORE MCBRIDE**

**(Case No. 12187)**

A hearing was held after due notice on August 20, 2018. The Board members present were: Mr. Dale Callaway, Ms. Ellen Magee, Mr. Bruce Mears, Mr. John Mills, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for a variance from the side yard setback for a proposed structure.

Findings of Fact

The Board found that the Applicant is seeking a variance of 9.6 feet from the fifteen (15) feet side yard setback requirement on the west side for a proposed garage. This application pertains to certain real property located on the north side of Arvey Road, approximately 215 feet east of Hitch Pond Road (911 Address: 14265 Arvey Road, Laurel) said property being identified as Sussex County Tax Map Parcel Number 3-32-9.00-42.00.

1. The Board was given copies of the Application, a building permit application, assessment information, 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 four (4) letters in support of the Application and no correspondence in opposition to the Application.
3. The Board found that Theodore McBride was sworn in to testify about the Application and he submitted exhibits to the Board including a survey of the Property dated August 7, 2018.
4. The Board found that Mr. McBride testified that the Property is unique due to the shape of the lot.
5. The Board found that Mr. McBride testified that the structure cannot be placed elsewhere on the lot because of the septic field and well placement. The well is in the rear yard and septic system is in the front yard.
6. The Board found that Mr. McBride testified that the situation was not caused by Applicant as he did not draw the lot lines. Rather, the lot was created by a prior owner. The dwelling was also built by a prior owner.
7. The Board found that Mr. McBride testified that the variance will not affect the essential character of the neighborhood as there are similar garages on neighboring properties. Neighbors support the Application and letters of support from the neighbors have been submitted.
8. The Board found that Mr. McBride testified that this request is the minimum variance needed to afford relief.
9. The Board found that Mr. McBride testified that, if the garage were to be placed at any other location on the Property, it would create a need for a greater variance.
10. The Board found that Mr. McBride testified that the garage was placed in alignment with the house and driveway. The house is parallel to the road but is not parallel to the side property line.
11. The Board found that no parties appeared in support of or in opposition to the Application.
12. 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 the odd shape of the lot, the location of the well and septic system which limit the developable area of the lot. These 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 build a garage on the Property.
- 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 unique conditions as noted above and the buildable area thereof is limited due to those conditions. The Applicant seeks to build a garage of reasonable size 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 the garage to be constructed 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 limited building envelope of the Property. The Property was developed with a house when the Applicant purchased the Property and the lot also contained a well and septic system. These conditions limited the areas where a garage could reasonably be built. The buildable area is also limited due to the unique shape of the lot. These unique conditions resulted in a limited building envelope on the Property and the small building envelope has created the exceptional practical difficulty. The unique characteristics of the Property are clear when reviewing the record.
- 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. No evidence was presented that the variance would somehow alter the essential character of the neighborhood. The Board also notes that there are similar structures in the neighborhood and that neighbors have indicated support of the request.
- 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 construct a reasonably sized garage on the lot. The Board notes that the garage is designed to be parallel to the house but only a corner of the garage will encroach into the setback area.

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 October 16, 2018