

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

**IN RE: ARCHIE STRAZZELLA**

**(Case No. 12210)**

A hearing was held after due notice on October 1, 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 requirement for an existing structure.

Findings of Fact

The Board found that the Applicant is seeking a variance of 7.8 feet from the fifteen (15) feet side yard setback requirement on the south side for an existing garage. This application pertains to certain real on the west side of Oak Road, approximately 2,589 feet south of Beach Highway (Route 16) (911 Address: 12962 Oak Road, Greenwood) said property being identified as Sussex County Tax Map Parcel Number 4-30-10.00-19.00.

1. The Board was given copies of the Application, an affidavit of Joseph Weening, a building permit application, a survey of the Property dated June 18, 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 Archie Strazzella was sworn in to testify about the Application and Shannon Carmean Burton, Esquire, presented the Application on behalf of the Applicant. Mrs. Burton submitted exhibit booklets to the Board.
4. The Board found that Mrs. Burton stated that the only variance required would be for the garage as the shed will be moved to be compliant with the Sussex County Zoning Code.
5. The Board found that Mrs. Burton stated that the Applicant purchased the Property in June 2018 and Mr. Weening purchased the Property in May 2012. The garage was located on the Property at that time and the Applicant believes the garage was built in 2000 by a prior owner with a permit. Mr. Weening was previously unaware of the encroachment.
6. The Board found that Mrs. Burton stated that the garage has not moved since 2000 and there have been no complaints about its location.
7. The Board found that Mrs. Burton stated that the Property is unique due to its large, irregular shaped lot and that an exceptional practical difficulty exists due to the uniqueness of the Property.
8. The Board found that Mrs. Burton stated that it would not be possible to develop the Property otherwise without removing a portion of the garage and that the variance is necessary to enable a reasonable use of the Property.
9. The Board found that Mrs. Burton stated that the exceptional practical difficulty was not created by the Applicant or the previous owner as they both purchased the Property with the garage existing.
10. The Board found that Mrs. Burton stated that the variance will not alter the character of the neighborhood as it has been there for eighteen (18) years and the variance will not be detrimental to the public welfare. Neighbors also support the Application.
11. The Board found that Mrs. Burton stated that the variance requested is the minimum variance that will afford relief.
12. The Board found that Mr. Strazzella affirmed the statements made by Mrs. Burton as true and correct.

13. The Board found that Mr. Strazzella testified that the road on an adjacent property to the south shifts due to plowing.
14. The Board found that Jay Reibsome was sworn in to testify about the Application. He had no opposition to the variance for the garage.
15. The Board found that one party (1) appeared in support of the Application and no parties appeared in opposition to the Application.
16. 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 size and shape. The Property is long and narrow and has an odd shape. These unique conditions have created an odd building envelope. The situation is also unique because the Applicant only recently acquired the Property and, as part of the settlement process, learned that an existing garage encroached into the setback areas. These conditions are unique and have created an exceptional practical difficulty for the Applicant who seeks to retain a reasonably sized 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 size and shape and the buildable area thereof is limited due to its size and shape. 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 variance is necessary to enable the reasonable use of the Property as the variance 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 size and shape of the Property. The lot was created by a prior owner and the garage was on the Property when the Applicant purchased the same. The lot's unique conditions have resulted in a limited building envelope on the Property and these conditions have created the exceptional practical difficulty. The unique characteristics of the Property are clear when reviewing the survey. The Board is convinced that the exceptional practical difficulty was not created by the Applicant but was created by the lot's unique characteristics.
  - 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 has been on the Property for approximately 18 years without complaint. The garage is also located close to the south property line which is adjacent to lands used for an access road. The encroachment into this setback area has no impact on the neighbor; as evidenced by the neighbor's lack of objection to the Application. No evidence was presented that the variance would somehow alter the essential character of the neighborhood. The lack of evidence is telling since, if the structure had somehow altered the essential character of the neighborhood, the Board would expect some evidence thereof.
  - e. The variance sought is the minimum variance necessary to afford relief and the variance requested represent 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. No additions or modifications to the garage are sought.

- f. The Board also notes that the Applicant will be moving a shed, which encroaches into the side yard setback area, in compliance with the Code so no variance will be needed for that structure. It is, thus, clear to the Board that the Applicant has taken reasonable measures to minimize the need for variances.

The Board granted the variance application for the garage finding that it met the standards for granting a variance.

#### Decision of the Board

Upon motion duly made and seconded, the variance application for the garage 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 for the garage.

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 December 11, 2018.