

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: WALTER N. THOMAS, II

(Case No. 12215)

A hearing was held after due notice on October 15, 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 a proposed structure.

Findings of Fact

The Board found that the Applicant is seeking a variance of 10 feet from the fifteen (15) feet side yard setback requirement on the northeast side for an accessory structure greater than 600 square feet. This application pertains to certain real property on the northwest side of Griffith Lake Drive, approximately 0.26 miles northeast of Meadow Brook Lane (911 Address: 16192 Bow Tie Drive, Milford) said property being identified as Sussex County Tax Map Parcel Number 1-30-2.00-27.01.

1. The Board was given copies of the Application, a survey of the Property dated August 7, 2018, pictures, 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 Walter Thomas was sworn in to testify about the Application.
4. The Board found that Mr. Thomas testified that he proposes to replace a garage with a larger one. The existing garage was constructed built between the 1950s and 1976 and measures 20 feet by 32 feet. The proposed garage will measure 28 feet by 40 feet.
5. The Board found that Mr. Thomas testified that the Property is unique is as it is a narrow lot sloped down to the lake and is limited by the placement of the septic line and the drain field. The Property is also wooded with large trees which he does not want to remove. The rear yard slopes greatly so the garage cannot be placed there. Part of the Property is also located in the lake.
6. The Board found that Mr. Thomas testified that the current building is almost up to the property line and does have a variance. The new building will be at least 5 feet from the side property line.
7. The Board found that Mr. Thomas testified that the shed in the front yard will be removed.
8. The Board found that Mr. Thomas testified that he has received no complaints about the existing garage.
9. The Board found that one (1) person appeared in support of and no one appeared in opposition to the Application.
10. 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 located adjacent to Griffin Lake and slopes greatly towards the rear yard. In fact, a significant portion of the rear yard is located in Griffin Lake. Due to these conditions, the building envelope is limited. The building envelope is further limited because of the location of

the septic system, drain field and large, mature trees. These conditions are unique and have created an exceptional practical difficulty for the Applicant who seeks to construct a reasonably sized garage on the lot.

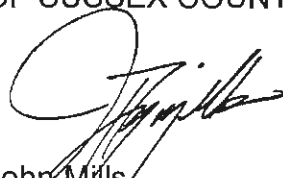
- b. Due to the uniqueness of the lot, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property has unique physical conditions and the buildable area thereof is limited due to these conditions. The Applicant seeks to construct a garage of reasonable size 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 placed 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 physical conditions of the Property. The lot was created by a prior owner and a garage was on the Property when the Applicant acquired 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 will be located in a similar location as an existing garage. 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 existing garage had somehow altered the essential character of the neighborhood, the Board would expect some evidence thereof. The Board also notes that the neighbor most affected by the request does not oppose this relief.
- 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 place a reasonably sized garage on the Property. The Board is convinced that the Applicant tried to fit the garage within the building envelope but was constrained by Property's unique conditions as noted above. The Board also notes that the garage will not encroach farther into the setback area than the existing garage. Additionally, the Applicant will remove a shed from the Property.

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 December 18, 2018.