

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: JACKIE D. FITZGERALD

(Case No. 12216)

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 variances from the front yard setback requirement for an existing and proposed structure.

Findings of Fact

The Board found that the Applicant is seeking a variance of 11.4 feet from the forty (40) feet front yard setback requirement for an addition to an existing garage. This application pertains to certain real property located on the south side of Staytonville Road, approximately 0.42 miles west of Memory Road (911 Address: 12616 Staytonville Road, Harrington); said property being identified as Sussex County Tax Map Parcel Number 4-30-1.00-7.00.

1. The Board was given copies of the Application, a survey of the Property, 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 the Application or in opposition to the Application.
3. The Board found that Jackie Fitzgerald was sworn in to testify about the Application.
4. The Board found that Mr. Fitzgerald testified that the Property is unique due to surrounding ditches and that the Property cannot otherwise be developed because of the location of the septic tank and the well.
5. The Board found that Mr. Fitzgerald testified that the exceptional practical difficulty was not created by the Applicant.
6. The Board found that Mr. Fitzgerald testified that the garage was placed in its current location by his ex-wife.
7. The Board found that Mr. Fitzgerald testified that the addition could not be placed on the south of the building as it would impede entrance to the home.
8. The Board found that Mr. Fitzgerald testified that the variance will not alter the character of the neighborhood as it is an addition to an existing building.
9. The Board found that Mr. Fitzgerald testified that the addition will measure 12 feet by 26 feet as recommended by his contractor.
10. The Board found that no parties appeared in support of or in opposition to the Application
11. 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 location of tax ditches on sides of the Property and due to the location of a septic system and an existing dwelling. These conditions greatly limit the buildable area of the Property and have created an exceptional practical difficulty for the Applicant. The Property is also further constrained due to the location of the existing garage.
 - b. Due to the uniqueness of the Property, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Applicant seeks to build an addition to an existing garage 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 Applicant to build an addition to an existing garage on the Property. The Board is convinced that the shape and location of the proposed addition are reasonable, which is confirmed when reviewing the survey provided by the Applicant. The Board notes that there is no other reasonable location where this addition could be constructed.

- c. The exceptional practical difficulty was not created by the Applicant. The Property has unique physical conditions due to the tax ditches and the septic system. These conditions have created a restricted building envelope and the exceptional practical difficulty for the Applicant who seeks to build an addition to an existing garage. The Applicant is further constrained by the location of the existing garage.
- 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 proposed addition will have no effect on the character of the neighborhood. The Property is located in an agricultural area and there was no evidence of any impact on neighboring properties. No evidence was presented that the variance would somehow alter the essential character of the neighborhood.
- 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 build an addition to an existing garage on 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.