

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: CHARLES D. MARTIN & CAROLYN F. MARTIN

(Case No. 12234)

A hearing was held after due notice on November 19, 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 corner front setback requirement for an existing structure.

Findings of Fact

The Board found that the Applicants are seeking a variance of 4.2 feet from the fifteen (15) feet corner front yard setback requirement for a garage. This application pertains to certain real property located on the southwest corner of Beech Drive and Hickory Lane within the Sandy Brae subdivision (911 Address: 18168 Hickory Lane, Lewes); said property being identified as Sussex County Tax Map Parcel Number 3-34-6.00-421.00.

1. The Board was given copies of the Application, a building permit application, a survey of the Property dated August 20, 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 the Application or in opposition to the Application.
3. The Board found that Carolyn Martin and Charles Martin were sworn in to testify about the Application. Mrs. Martin submitted pictures of the Property and a letter of support.
4. The Board found that Mr. Martin testified that a permit was applied for to build the garage but, when building began, a 1,000-gallon underground oil tank was discovered and the garage had to be moved. Due to the location of the oil tank, there is no other location where the garage could be located. The Applicants received permission from the homeowner's association to move the garage.
5. The Board found that Mr. Martin testified that there have been no complaints from neighbors about the garage.
6. The Board found that Mrs. Martin testified that the Property is unique because it is a corner lot with two front yards.
7. The Board found that Mrs. Martin testified that the Property cannot otherwise be developed with the current setback requirements because of the placement of the 1,000-gallon oil tank.
8. The Board found that Mrs. Martin testified that the exceptional practical difficulty was not created by the Applicants but by the company that installed the oil tank.
9. The Board found that Mrs. Martin testified that the variance will not alter the essential character of the neighborhood as the garage matches the house and will be an asset to the community.
10. The Board found that Mrs. Martin testified that the variance requested is the minimum variance required to bring the Property into compliance with the County setback regulations.
11. The Board found that Mrs. Martin testified that there are other similar garages in the neighborhood.
12. The Board found that Mr. Martin testified that there is a gap between the property line and the edge of paving of Beech Drive.

13. The Board found that Kathy Davidson was sworn in to give testimony in support of the Application. Ms. Davidson is the current president of the Sandy Brae Homeowner's Association and the Association supports the Application. She testified that there are no safety issues with the nearby intersection.
14. The Board found that one person appeared in support of and no one appeared in opposition to the Application.
15. 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 improved by an underground oil tank within the building envelope. Due to the location of the oil tank on the Property, the Applicants were unable to construct the garage within the building envelope. Furthermore, the Property is adjacent to 2 roads and is, thus, subject to corner setback requirements which reduce the building envelope. These conditions greatly limit the buildable area of the Property and have created an exceptional practical difficulty for the Applicants.
 - 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 an existing 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 the Applicants to retain an existing garage on the Property. The Board is convinced that the shape and location of the garage 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 garage could be located due to the placement of the underground storage tank.
 - c. The exceptional practical difficulty was not created by the Applicants. The Property has unique physical conditions due to the underground storage tank, which limits the available placement options for the garage. The Property is further limited since it is a corner lot. These conditions have created the exceptional practical difficulty for the Applicants who seek to retain an 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 garage will have no effect on the character of the neighborhood. The pictures demonstrate that the garage is of a similar look to the dwelling and that the garage does not pose any visibility concerns with the nearby intersection. No evidence was presented that the variance would somehow alter the essential character of the neighborhood. Rather, the homeowner's association supports the Application. The Board also notes that there is a significant gap between the edge of paving of Beech Drive and the property line so the encroachment is less noticeable than if the property line met the edge of paving.
 - 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 Applicants have demonstrated that the variance sought will allow the Applicants to retain an existing garage on the Property. 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 January 29, 2019.