

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: RON ANTHONY & ANNE ANTHONY

(Case No. 12235)

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 variances from the side yard and rear yard setback requirements for an existing structure.

Findings of Fact

The Board found that the Applicants are seeking a variance of 8.5 feet from the ten (10) feet side yard setback requirement on the southwest side for an existing garage and a variance of 8.9 feet from the ten (10) feet rear yard setback requirement for an existing garage. The Property is located on the north side of Pine Street approximately 94 feet west of Shore Drive (911 Address: 29121 Pine Street, Milford) said property being identified as Sussex County Tax Map Parcel Number: 2-30-17.00-137.00.

1. The Board was given copies of the Application, a property record card, a minor subdivision plan of the Property dated January 30, 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 one (1) letter in support of the Application and no correspondence in opposition to the Application.
3. The Board found that Ron Anthony was sworn in to testify about the Application. Mr. Anthony submitted an updated survey to the Board.
4. The Board found that Mr. Anthony testified that the Property is located in Prime Hook Beach.
5. The Board found that Mr. Anthony testified that he wishes to separate the lots and needs the requested variances for the garage to be compliant with Sussex County Code.
6. The Board found that Mr. Anthony testified that he owns the Property adjacent to the side yard.
7. The Board found that Mr. Anthony testified that the Property is unique because of the location of the garage which was placed on the Property over 50 years ago by a prior owner.
8. The Board found that Mr. Anthony testified that there are 10 other garages in the neighborhood located in a similar location as this garage.
9. The Board found that Mr. Anthony testified that the Property cannot be otherwise developed because the garage has been there since 1968.
10. The Board found that Mr. Anthony testified that the Applicants did not create the exceptional practical difficulty.
11. The Board found that Mr. Anthony testified that the variances will not alter the essential character of the neighborhood as there are similar garages in the area.
12. The Board found that Mr. Anthony testified that the variance request is the minimal request to afford relief to allow the division of the two lots.
13. The Board found that Mr. Anthony testified that there are no issues with access to the garage.
14. The Board found that Mr. Anthony testified that the garage is on cinder blocks.
15. The Board found that Mr. Anthony testified that the Property is served by a cesspool located in the center of the rear yard


16. The Board found that no parties appeared in support of or in opposition to the Application.
17. 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 the location of a cesspool servicing the dwelling. The lot consists of only 5,866 square feet, which is a small lot. The size of the lot has created a small building envelope. The cesspool is located within the building envelope to the rear of the dwelling and its location greatly limits placement options for the garage on the Property. The situation is also unique because the garage has been on the Property for many years but does not comply with the setback requirements. These unique conditions have created an exceptional practical difficulty for the Applicants.
 - b. Due to the uniqueness of the Property and situation, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The garage was constructed over 50 years ago and the Applicants seek to retain the garage on the Property but are unable to do so without violating the Sussex County Zoning Code. The Board is convinced that the variances are necessary to enable the reasonable use of the Property as the variances will allow the garage to remain 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 Applicants. The garage cannot be moved into compliance as it is a cinder block structure and has been in its present location for many years.
 - c. The exceptional practical difficulty was not created by the Applicants. The Property has unique physical conditions, as discussed above, and those conditions have limited the building envelope on the Property and have created an exceptional practical difficulty. Importantly, the Applicants did not develop the Property with the garage. Rather, the garage was placed on the Property many years ago by a prior owner.
 - d. The variances 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 garage has been on the Property for many years without recorded complaints. Despite the longstanding location of the garage and notification to neighbors, no complaints were noted in the record about its location. Furthermore, no evidence was presented which would indicate that the variances would somehow alter the essential character of the neighborhood or be detrimental to the public welfare.
 - e. The variances sought are the minimum variances necessary to afford relief and the variances requested represent the least modifications possible of the regulations at issue. The Applicants have demonstrated that the variances sought will allow the Applicants to retain the existing garage on the same footprint. No additions or modifications to the garage are sought or planned.

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.