

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

**IN RE: MARK DIIENNO**

**(Case No. 12288)**

A hearing was held after due notice on April 1, 2019. The Board members present were: Mr. Dale Callaway, Ms. Ellen Magee, Mr. John Mills, Mr. John Williamson, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for variances from the front yard setback requirements for a proposed structure on a through lot.

Findings of Fact

The Board found that the Applicant is seeking a variance of 7.6 feet from the average front yard setback requirement of 23.6 feet from 4<sup>th</sup> Street for the proposed garage. This application pertains to a through lot located on the northeast side of South Drive and the west side of 4<sup>th</sup> Street approximately 200 feet south of Midway Drive in the Tru-Vale Acres Subdivision. (911 Address: 505 South Drive, Rehoboth Beach); said property being identified as Sussex County Tax Map Parcel Number 3-34-13.00-87.00.

1. The Board was given copies of the Application, a survey of the Property dated January 28, 2019, a survey dated January 14, 2019, 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 Mark Dilenno was sworn in to give testimony about the Application.
4. The Board found that Mr. Dilenno testified that the Property is a narrow, irregularly shaped, through lot. The lot is not parallel with neighboring properties and consists of less than 10,000 square feet. Mr. Dilenno purchased the Property in its existing condition.
5. The Board found that Mr. Dilenno testified that the lot is currently empty but was previously improved by a single-wide manufactured home. He plans to replace the home with a new manufactured home with a carport and garage.
6. The Board found that Mr. Dilenno testified that the garage is needed to keep his car out of the elements, which is important because he is unable to scrape ice due to shoulder problems.
7. The Board found that Mr. Dilenno testified that the garage is in proportion with the neighborhood.
8. The Board found that Mr. Dilenno testified that the carport will also serve as a porch.
9. The Board found that Mr. Dilenno testified that the Property cannot otherwise be developed for a garage without the variance.
10. The Board found that Mr. Dilenno testified that the exceptional practical difficulty was not caused by the Applicant as he purchased the Property as is.
11. The Board found that Mr. Dilenno testified that the variance will not alter the essential character of the neighborhood but will be in keeping with other dwellings.
12. The Board found that Mr. Dilenno testified that the variance requested is the minimum variance necessary to afford relief. The Applicant's original plan was to place a larger dwelling and garage on the property but, after receiving the survey, the Applicant reduced the size of the dwelling and garage.

13. The Board found that Mr. Dilenno testified that there is 14 feet from the property line to edge of pavement on South Drive and 4<sup>th</sup> Street.
14. The Board found that Cindy Sakowski and Stan Sakowski were sworn in to give testimony in support of the Application.
15. The Board found that two (2) parties 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 as it is a small, irregularly shaped, narrow through lot. The Property consists of only 6,474 square feet and is only 50 feet wide; as is clearly shown on the survey. The property line adjacent to South Drive is a sharp angle and results in the west side of the Property being nearly 30 feet longer than the east side of the Property. As a result, these conditions have created a small, narrow, and unusually shaped building envelope. The building envelope is further reduced since the Property is considered a through lot. The unique characteristics of this Property limit the buildable area available to the Applicant 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 a unique size and shape and the buildable area thereof is limited due to its size, shape, and through lot building restrictions. The Applicant seeks to construct a reasonably sized garage on the lot 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 a reasonably sized garage to be constructed on the lot. The Board is convinced that the shape and location of this structure is also reasonable, which is confirmed when reviewing the survey provided by the Applicant. The Board notes that the garage is also necessary for the Applicant because he has shoulder problems which make it difficult to scrape ice from his car. The garage will provide shelter for the vehicle from weather.
  - c. The exceptional practical difficulty was not created by the Applicant. The Applicant did not create the unusual size or shape of the Property. These conditions have resulted in a limited building envelope on the Property and the small building envelope has created the exceptional practical difficulty. The small building envelope was further limited by the through lot regulations. 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 and the through lot regulations.
  - 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 is located 16 feet from the property line along 4<sup>th</sup> Street and there is approximately 14 additional feet from the property line to the edge of paving of 4<sup>th</sup> Street. This additional space gives the false impression that the property is larger than it actually is. As such, the encroachment will not be as noticeable. The Board notes that neighbors

appeared in support of the Application and no evidence was presented that the variance would somehow alter the essential character of the neighborhood.

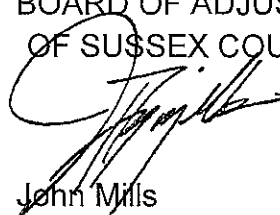
- e. The variance sought is the minimum variance necessary to afford relief and the variance requested represents the least modification possible of the regulation at issue. The Applicant has demonstrated that the variance sought will allow the Applicant to construct a reasonably sized garage on the Property that is large enough to house a vehicle. The Board notes that the structures on the Property are reasonably sized and the Applicant reduced the size of the proposed dwelling in order to minimize the encroachment into the setback area of the garage.
- f. The Board notes that the survey dated January 28, 2019, and provided by the Applicant demonstrates that the average front yard setback requirement from 4<sup>th</sup> Street is 23.6 feet. For purposes of this Application, the average front yard setback from 4<sup>th</sup> Street for this Property is thus 23.6 feet.

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. John Williamson, 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 June 4, 2019.