

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: MARIANNE YOUNG & NEIL YOUNG

(Case No. 12311)

A hearing was held after due notice on June 3, 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 side yard and rear yard setback requirements for a proposed garage.

Findings of Fact

The Board found that the Applicants are requesting a variance of 10 feet from the twenty (20) feet rear yard setback requirement for a proposed garage and a variance of 5 feet from the fifteen (15) feet side yard setback requirement on the northeast side for a proposed garage. The Property is located on the north side of Briarhook Road approximately 157 feet east of Hensley Road (911 Address: 4373 Briarhook Road, Seaford) said property being identified as Sussex County Tax Map Parcel Number: 5-31-6.00-16.05.

1. The Board was given copies of the Application, letters supporting the Application, a subdivision plan dated January 25, 2013, a survey of the Property dated March 14, 2019, pictures 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 three (3) letters in support of the Application and no letters in opposition to the Application.
3. The Board found that Neil Young and Marianne Young were sworn in to testify about the Application. The Applicants submitted additional photographs to the Board to review.
4. The Board found that Mrs. Young testified that the Property is unique due to the placement of the dwelling, which was placed on the lot by a prior owner.
5. The Board found that Mrs. Young testified that the Property cannot otherwise be developed with a garage that will line up with the driveway without this variance due to the location of the house. Otherwise, if the garage was built in compliance with the Code, it would be too close to the house.
6. The Board found that Mrs. Young testified that the variances will not alter the essential character of the neighborhood. The surrounding area is farmland. The neighboring property to the rear is farmed and there are few residential properties in the area. The neighboring residential property to the east has a home which is located approximately 100 feet from the location of the proposed garage.
7. The Board found that Mrs. Young testified that neighbors support the Application.
8. The Board found that Mrs. Young testified that the variances requested are the minimum variances to afford relief.
9. The Board found that Mr. Young testified that, if the garage was brought into compliance, it would not line up with the driveway and would be located where the fence is located.
10. The Board found that Mr. Young testified that the driveway is 5 feet from the side property line.
11. The Board found that Mr. Young testified that the Applicants did not build the house.

12. The Board found that Mr. Young testified that the septic system is located in the front yard to the west side and the well is located in the rear yard to the west side. Both the well and septic system are located in the building envelope.
13. The Board found that Mr. Young testified that the variances will not alter the essential character of the neighborhood.
14. The Board found that Mr. Young testified that there is enough room to plant Leland Cypress trees to the rear of the garage.
15. The Board found that Mr. Young testified that the proposed location of the garage will give him enough room to safely access the garage and provide a safe distance from the garage to the house for fire safety.
16. The Board found that Mr. Young testified that the garage will be used to store his boat and vehicles.
17. The Board found that no one appeared in support of or in opposition to the Application.
18. 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 unrebutted, 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 due to the location of the existing dwelling, well, septic system, and entrance onto Briarhook Road. From the survey it is clear that the driveway is located to the far east side of the Property and the dwelling is located to that side of the lot as well. The well and septic system are located within the building envelope so the area where a garage could be located is greatly limited. The Applicants propose to construct a reasonably sized detached garage but are unable to do so due to these conditions which greatly restrict the building envelope. As such, 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 Property was laid out and the dwelling was constructed by a prior owner. The Applicants seek to construct a reasonable 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 be constructed 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 will also afford the Applicants with space to store their boats and vehicles.
 - 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 dwelling. Rather, the dwelling was placed on the Property by a prior owner. The Applicants are unable to construct this reasonable garage in compliance with the Code due to the existing layout of the home, well, septic system, and driveway.
 - 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 dwelling has been on the Property for many years and the Applicants seek to build this garage near the home and driveway. Neighbors have indicated support of the proposal. No evidence was presented that the garage would

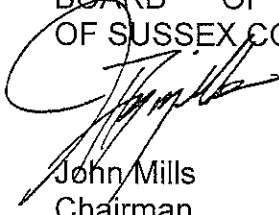
somehow alter the essential character of the neighborhood or be detrimental to the public welfare.

- 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 construct a reasonable garage large enough to accommodate the Applicants' intended use. The Board is convinced that the Applicants took steps to minimize the encroachment by constructing the garage away from the property lines while also not building too close to the house to minimize the usability of the garage or to create a fire hazard.

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 of the motion to approve were Mr. Dale Callaway, Ms. Ellen Magee, Mr. John Mills, 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 18, 2019.