

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: EDWARD RANKIN & SUSAN RANKIN

(Case No. 12339)

A hearing was held after due notice on August 5, 2019. The Board members present were: Dr. Kevin Carson, Mr. Jeff Chorman, Ms. Ellen Magee, Mr. John Williamson, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for a variance from separation distance requirement for a proposed structure.

Findings of Fact

The Board found that the Applicants are seeking a variance of 8 feet from the twenty (20) feet separation distance requirement from structures from Unit 12 for a proposed garage. Unit 12 is located to the north of this lot. This application pertains to certain real property located on the east side of Lighthouse Lane approximately 218 feet north of Court Drive in Long Neck Village (911 Address: 26033 Lighthouse Lane, Millsboro); said property being identified as Sussex County Tax Map Parcel Number 2-34-24.00-40.02 Unit 13. After a hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, an aerial photograph of the Property, a survey of the Property dated January 6, 2016, drawings of the location of the proposed garage, 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 or in opposition to the Application.
3. The Board found that Edward Rankin was sworn in to give testimony about the Application.
4. The Board found that Mr. Rankin testified that he proposes to construct a garage to use for boat storage, woodworking, crafts, and storage.
5. The Board found that Mr. Rankin testified that his neighbor's outdoor shower and deck is only approximately 1.5 feet from the property line and the proposed garage would be 9.5 feet from the property line.
6. The Board found that Mr. Rankin testified that the Property is unique as it is a condominium association with rules which apply to a manufactured home park.
7. The Board found that Mr. Rankin testified that the lot is only 75 feet wide.
8. The Board found that Mr. Rankin testified that the Property cannot otherwise be developed for a garage without the variance.
9. The Board found that Mr. Rankin testified that the neighboring structures limit the building envelope.
10. The Board found that Mr. Rankin testified that the garage cannot be moved closer to the dwelling as the garage would block windows on that side of the home.
11. The Board found that Mr. Rankin testified that the exceptional practical difficulty was created by the neighbor's outdoor shower and steps being 1.5 feet off the property line.
12. The Board found that Mr. Rankin testified that the house was built by a prior owner.
13. The Board found that Mr. Rankin testified that the variance will not alter the essential character of the neighborhood as there are a number of garages in the development.
14. The Board found that Mr. Rankin testified that there is no opposition from neighbors or the homeowners association.
15. The Board found that Mr. Rankin testified that the property is serviced by community well and public sewer.

16. The Board found that Mr. Rankin testified that the variance requested is the minimum variance request to allow for a garage which will be used for boat storage and a woodworking shop.
17. The Board found that Mr. Rankin testified that the garage will meet all other setback requirements.
18. The Board found that Mr. Rankin testified that he will enter the garage from the front yard side of the garage.
19. The Board found that Mr. Rankin testified that, if the garage was moved closer to the road, it would be too close to the road and out of character for the neighborhood.
20. The Board found that no one appeared in support of or in opposition to the Application.
21. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, which the Board weighed and considered, the Board determined that the application failed to meet the standards for granting a variance. The findings below further support the Board's decision to deny the Application.
 - a. The Applicants failed to prove that a reasonably sized garage could not be built in strict conformity with the Sussex County Zoning Code. The issue which the Applicants allege prevents the construction of a garage in compliance with the Code is that the neighbor on Unit 12 has certain structures located too close to the shared property line.¹ While the drawing presented by the Applicants demonstrate that the neighboring structures are close to the shared property line, the Board was not convinced that the Applicants could not otherwise place a garage on the Property without the need for a variance. Based on the drawing, the Applicants could move the garage closer to their own dwelling and they could also shift the garage closer to Lighthouse Road. Doing so would increase the separation between the structures if not entirely eliminate the need for a variance. Furthermore, the Applicants failed to convince the Board that a smaller garage could not reasonably serve their needs. Based on the survey, a smaller garage would appear to fit within the building envelope without the need for a variance. For these reasons, the Board finds that the Property could be developed in strict conformity with the Code and that the variance is not necessary to enable reasonable use of the Property.
 - b. The Board finds that the Applicants are creating their own exceptional practical difficulty by proposing to construct a garage which does not fit within the building envelope. The Applicants' decision to construct a garage in this location is the reason for the need for a variance and has nothing to do with the size, shape, or condition of the Property. There is no unusual condition to the Property which has created this difficulty. The building envelope appears to otherwise be able to fit a garage without the need for the variance. The Board was not convinced that the variance request was the product of a *need*. Instead, the variance request appears to be the product of a *want* as the Applicants seek to build the garage as proposed for purposes of convenience, profit, and / or caprice. Since the Applicants can build a garage that can comply the Sussex County Zoning Code, the need for the variance is something created by the Applicants' wants rather than an unusual physical condition relating to the Property. The Applicants have thus created their own exceptional practical difficulty.

¹ The Board notes that the drawing provided by the Applicants use approximations so the Board cannot determine with exact certainty the location of the structures on the neighboring property. Nevertheless, the Board relies on the drawing and the Applicant's testimony that those structures are located approximately where shown on the drawing.

- c. Since the variance is not necessary to enable the reasonable use of the Property, the Board also finds that the variance requested is not the minimum variance necessary to afford relief. Furthermore, the Board finds that no variance is necessary to afford relief since there is space to build a reasonably sized garage on the Property in compliance with the Sussex County Zoning Code.

The Board denied the variance application finding that it failed to meet the standards for granting a variance.

Decision of the Board

Upon motion duly made and seconded, the variance application was denied. The Board Members in favor of the Motion to deny were Dr. Kevin Carson, Mr. Jeffrey Chorman, Ms. Ellen Magee, Mr. John Williamson, and Mr. Brent Workman. No Board Member voted against the Motion to deny the variance application.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY



Ellen M. Magee
Chair

If the use is not established within two (2) years from the date below the application becomes void.

Date October 8, 2019