

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

**IN RE: ROBERT DIFEBO & CHARLOTTE DIFEBO**

**(Case No. 12351)**

A hearing was held after due notice on August 19, 2019. The Board members present were: Dr. Kevin Carson, Mr. Jeff Chorman, Ms. Ellen Magee, and Mr. John Williamson.

Nature of the Proceedings

This is an application for variances from the side yard and rear yard setback requirements for existing structures.

Findings of Fact

The Board found that the Applicants are requesting a variance of 0.3 feet from the ten (10) feet rear yard setback requirement for an existing garage, a variance of 0.2 feet from the ten (10) feet side yard setback requirement on the south side for an existing garage, a variance of 1.3 feet from the ten (10) feet rear yard setback requirement for an existing dwelling, a variance of 3.5 feet from the ten (10) feet side yard setback requirement on the north side for an existing garage / clam house, a variance of 3.3 feet from the ten (10) feet side yard setback requirement on the north side for an existing garage / clam house, a variance of 3.3 feet from the ten (10) feet side yard setback requirement on the north side for an existing garage / clam house, and a variance of 3.7 feet from the ten (10) feet side yard setback requirement on the north side for an existing garage / clam house. The Property is located on the south side of Charlotte Cove approximately 511 feet northwest of Cedar Neck Road (911 Address: 38141 Charlotte Cove, Ocean View) said property being identified as Sussex County Tax Map Parcel Number: 1-34-13.00-62.00. After a hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a survey of the Property dated March 16, 2015, property record cards, a letter dated July 9, 2019, from Janelle Cornwell to the Applicants, email correspondence from opposition, 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 and one letter in opposition to the Application.
3. The Board found that Robert DiFebo and Charlotte DiFebo were sworn in to testify about the Application.
4. The Board found that Ms. DiFebo testified that the Applicants purchased the Property in 1982. The Property was originally developed with a dwelling constructed in the 1940s and, in 1992, the Applicants tore down the house and built a new house on the same footprint.
5. The Board found that Ms. DiFebo testified that the house has no basement or attic and additional storage space was needed.
6. The Board found that Ms. DiFebo testified that the garage was built to align with the house and the Applicants depended on the builder to place the garage within the building envelope.
7. The Board found that Ms. DiFebo testified that the Property could not otherwise be developed for a garage as it is placed to have access to the existing driveway and not impede access to the well.
8. The Board found that Ms. DiFebo testified that, if moved away from the well, the garage would be in front of the house.

9. The Board found that Ms. DiFebo testified that the Applicants do not own the bank of the Assawoman Canal because the State took a right-of-way in the rear yard. The Applicants believed that the property line went to an existing monument.
10. The Board found that Ms. DiFebo testified that the garage to the northwest is an old clam house.
11. The Board found that Ms. DiFebo testified that the Property is unique as it is a unusual shaped small lot with a non-conforming dwelling and garage existing.
12. The Board found that Ms. DiFebo testified that is will not alter the essential character of the neighborhood as there are other detached garages in the area.
13. The Board found that Ms. DiFebo testified that the variances requested are the minimum variances to afford relief without the garage being too close to the well and the dwelling. The well is located near the house and the garage was constructed close to the well.
14. The Board found that Mr. DiFebo testified that the surveyor marked out the area but DeShields builder made an error placing the garage. The new garage is just outside the building envelope by a few inches.
15. The Board found that Bessie Kotsiras, who is the Applicants' neighbor, was sworn in to give testimony in opposition of the Application. Ms. Kotsiras argued that the Property is not unique and that the garage should have been built in compliance with the Code.
16. The Board found that no one appeared in support of and one party appeared 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 weighed and considered, 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 an oddly shaped lot which has been subject to a taking in the rear yard from the State for a right-of-way to the Assawoman Canal. The rear yard is particularly odd due to the odd lot line and the location of a monument which incorrectly identifies the corner of the property. If the location of the monument was correct, the Applicants would have significantly more room in the rear yard. The Property is also unique because it was developed in the 1940s with a dwelling and garage. The dwelling has since been replaced on the same footprint and a certificate of compliance was issued for the house many years ago. The lot is also developed by a well, which is located in the building envelope and constrains the location of other structures on the lot. These conditions have created an unnecessary hardship and exceptional practical difficulty for the Applicants who seeks to retain an existing dwelling and garages on the Property but cannot do so in compliance with the Sussex County Zoning Code.
  - b. The unnecessary hardship and exceptional practical difficulty are not being created by the provisions of the Sussex County Zoning Code.
  - c. Due to the uniqueness of the Property, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Applicants propose to retain an existing dwelling and garages but are unable to do so without violating the setback requirements. The variances are thus necessary to enable reasonable use of the Property. The Board is convinced that the shape and location of the structures are also reasonable (which is confirmed when reviewing the survey). Notably, the dwelling is similar in location to the prior dwelling which was located on the Property in the 1940s and the garage / clam house on the north side has been on the

- Property since the 1940s. The other garage has only recently been located on the lot and only a few inches of the garage project into the setback area.
- d. The unnecessary hardship and exceptional practical difficulty were not created by the Applicants. The Applicants did not create the size and shape of the lot or place the existing garage on the Property. Rather, a prior owner placed that structure on the Property. The dwelling was placed on the lot in 1992 and the Applicants received a certificate of compliance only to later learn of the encroachment. The new garage was placed on the lot by a contractor who made a slight error even though the location of the garage was staked out by a surveyor. The Applicants reasonably relied on their builder and surveyor to comply with the Code. Furthermore, the building envelope was constrained due to the location of the well and the taking of portions of the rear of the Property. The unique conditions of the Property have created an unnecessary hardship and exceptional practical difficulty for the Applicants who seek to retain the existing dwelling and garages.
  - e. 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 Board is convinced that the structures will not have a negative impact on the neighborhood. The dwelling and the garage to the north side have been in their present location for many years yet no complaints were noted in the record about their location. The garage on the south side was recently constructed and only a mere portion of the garage encroaches into the setback area. The neighbor to the south has objected to the request but she provided no evidence which convinced the Board that this small encroachment would somehow alter the essential character of the neighborhood or be detrimental to the public welfare. The Board notes that the new garage will only encroach by inches into the setback area.
  - f. 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 retain the existing dwelling and garages. No additions or modifications to those structures are proposed.
  - g. The condition or situation of the Property and the intended use of the Property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the Sussex County Zoning Code.

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 Dr. Kevin Carson, Mr. Jeffrey Chorman, Ms. Ellen Magee, and Mr. John Williamson. No Board Member voted against the Motion to approve the variance application. Mr. Brent Workman did not participate in the discussion or vote on this application.

BOARD OF ADJUSTMENT  
OF SUSSEX COUNTY

*Ellen M Magee*

Ellen M. Magee  
Chair

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

Date *October 22, 2019*