

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: PAMELA PRICE

(Case No. 12402)

A hearing was held after due notice on January 27, 2020. 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 variances from the side yard setback requirements for existing structures.

Findings of Fact

The Board found that the Applicant is seeking a variance of 2.4 feet from the fifteen (15) feet side yard setback requirement on the southwest side for an existing overhang for a detached accessory structure and a variance of 1.6 feet from the fifteen (15) feet side yard setback requirement on the southwest side for an existing shed. This application pertains to certain real property located on the southeast side of Red Berry Road within the Holly Ridge subdivision (911 Address: 36826 Red Berry Road, Delmar) said property being identified as Sussex County Tax Map Parcel Number 5-32-14.00-119.00. After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a survey of the Property dated November 21, 2019, photographs, 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 or in opposition to the Application.
3. The Board found that Pamela Price was sworn in to testify about the Application.
4. The Board found that Ms. Price testified that the Property is unique because it is pie-shaped. She also testified that there is less room in the front yard so the septic system was placed in the rear yard. According to Ms. Price, the septic system is located in the middle of the rear yard and takes up a large portion of the building envelope.
5. The Board found that Ms. Price testified that the variances are needed for the existing detached garage and lean-to.
6. The Board found that Ms. Price testified that the existing detached garage was given a certificate of occupancy and the garage was measured at that time but the measurement was not accurate. The lean-to was later added and the lean-to causes the need for a variance.
7. The Board found that Ms. Price testified that the aesthetics of the garage would be ruined if the lean-to was removed.
8. The Board found that Ms. Price testified that the need for the variances was not caused by the Applicant as she purchased the Property in its current condition and the previous owner who built the structures is deceased. Ms. Price purchased the Property from a bank in December 2019.
9. The Board found that Ms. Price testified that the many of the neighboring properties have similar accessory structures.
10. The Board found that Ms. Price testified that the structures are adjacent to a concrete driveway and the garage was likely located in this position due to the location of the driveway.
11. The Board found that Ms. Price testified that she has received no complaints about the structures.

12. The Board found that Ms. Price testified that leaving the structures are assets to surrounding properties.
13. The Board found that Ms. Price testified that the variances requested are the minimum variances necessary to afford relief and bring the Property into compliance.
14. The Board found that no one appeared in support of or in opposition to the Application.
15. 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 for the variances met the standards for granting a variance. The findings below further support the Board's decision to approve the Application for the variances for those structures.
 - a. The Property is unique due to its shape and location of the septic system. The Property is pie-shaped and has a narrow front yard. This unique shape has limited the building envelope for the Property. The building envelope is further limited due to the fact that the septic system and drain field were located in the middle of the rear yard. These conditions greatly limit an already uniquely shaped building envelope. These conditions have thus created an unnecessary hardship and exceptional practical difficulty for the Applicant who seeks to retain an existing garage and lean-to on the lot.
 - 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 lot, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property has unique physical characteristics and the buildable area thereof is limited due to those characteristics. The Applicant seeks to retain an existing garage and lean-to on the lot but is 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 these reasonably sized structures to remain on the lot. The Board is convinced that the shape and location of these existing structures are also reasonable, which is confirmed when reviewing the survey provided by the Applicant. Notably, the location of these structures are adjacent to the driveway and, since the structures are used as a garage and lean-to, the location of these structures is logical.
 - d. The unnecessary hardship and exceptional practical difficulty were not created by the Applicant. The Property was created by a prior owner and the Applicant did not create the unusual size of the lot or install the septic system. The unique shape of the lot is clear when reviewing the survey provided by the Applicant. These conditions have created a limited building envelope on the Property and the unnecessary hardship and exceptional practical difficulty. Furthermore, these structures were placed on the lot by a prior owner.
 - 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 existing structures will have no effect on the character of the neighborhood. The record is clear that there are similar structures on nearby properties. Furthermore, the structures have been on the Property for many years yet no complaints were noted in the record about the structures. No evidence was presented that the variances would somehow alter the essential character of the neighborhood or be detrimental to the public welfare. The lack of evidence is telling since, if the structures altered the essential character of the neighborhood or substantially or permanently impaired the use or development of neighboring properties or were

detrimental to the public welfare, the Board would have expected some evidence thereof to be presented in the record.

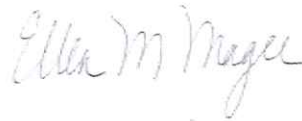
- f. The variances sought are the minimum variances necessary to afford relief and the variances requested represent the least modifications possible of the regulations at issue. The Applicant has demonstrated that the variances sought will allow the Applicant to retain the existing structures on the lot. 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. Jeff Chorman, 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



Ellen M. Magee
Chair

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

Date March 17, 2020