

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

**IN RE: JANE L. HAWKINS**

**(Case No. 12444)**

A hearing was held after due notice on July 6, 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 front yard setback and side yard setback requirements for proposed and existing structures.

Findings of Fact

The Board found that the Applicant is requesting a variance of 5 feet from the fifteen (15) feet side yard setback requirement on the east side for a proposed garage and a variance of 4.2 feet from the forty (40) feet front yard setback requirement for existing steps. This application pertains to certain real property that is located on the north side of Daisey Road approximately 287 feet southeast of Honeysuckle Road (911 Address: 34517 Daisey Road, Frankford); said property being identified as Sussex County Tax Map Parcel Number 1-34-18.00-46.01. 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 October 31, 2019, a letter in support of the Application from Charles and Elaine Parsons, 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 Jane L. Hawkins and John Hoban were sworn in to give testimony about the Application.
4. The Board found that Ms. Hawkins testified that she proposes to remove the existing one-car garage and construct a two-car garage.
5. The Board found that Ms. Hawkins testified that the garage will meet the front yard setback requirement.
6. The Board found that Ms. Hawkins testified that the Property has a unique shape and there is a tax ditch in the rear of the lot.
7. The Board found that Ms. Hawkins testified that the septic system is located on the east side of the house and the well is located on the west side.
8. The Board found that Ms. Hawkins testified that, if the garage was turned, it would not line up with the house.
9. The Board found that Ms. Hawkins testified that the septic has been on the Property since 1983 and the house has been on the Property since 1990.
10. The Board found that Ms. Hawkins testified that the Property cannot otherwise be developed as there is a septic system between the house and the proposed garage.
11. The Board found that Ms. Hawkins testified that the exceptional practical difficulty was not created by the Applicant but by the placement of the septic system.
12. The Board found that Ms. Hawkins testified that the variances will not alter the essential character of the neighborhood.
13. The Board found that Ms. Hawkins testified that the neighbors to the east of the property have provided a letter in support of the Application.
14. The Board found that Ms. Hawkins testified that the variances requested represent the minimum variance request to allow for a two-car garage.



15. The Board found that Mr. Hoban testified that the garage will be a pole building structure which will be the same height of the house and will have regular garage doors.
16. The Board found that Mr. Hoban testified that the proposed garage will be 10 feet from the septic field.
17. The Board found that Mr. Hoban testified that the garage cannot be moved to be in conformity with the building setback line without looking odd.
18. The Board found that Mr. Hoban testified that there is a gap between edge of paving and the property line.
19. The Board found that Ms. Hawkins testified that there have been no complaints about the existing steps.
20. 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 due to its size, shape, and the location of the tax ditch. The Property is oddly shaped and much of the rear of the lot is unbuildable due to the location of a tax ditch which bisects part of the Property. The Property is also limited by the location of a septic system and well within the building envelope. These unique characteristics of this Property have created an exceptional practical difficulty and unnecessary hardship for the Applicant who seeks to retain an existing set of steps on the Property and to construct a reasonably sized garage. The Board notes that the eastern property line is angled and this angle has also created an odd shape.
  - 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 a unique size, shape, and historical use and the buildable area thereof is limited due to its size, shape, and physical conditions. The Applicant seeks to retain an existing set of steps and to construct a garage on the Property 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 a reasonably sized, existing set of steps to remain on the lot and for the Applicant to construct a new garage on the site. The Board is convinced that the shape and location of these structures are also reasonable, which is confirmed when reviewing the survey provided by the Applicant.
  - d. The unnecessary hardship and exceptional practical difficulty were not created by the Applicant. The Applicant did not create the unusual size, shape, and condition 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 unique characteristics of the Property are clear when reviewing the survey. The Board is convinced that the unnecessary hardship and exceptional practical difficulty were not created by the Applicant but were created by the lot's unique characteristics.
  - 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 set of steps will have no effect on the character of the neighborhood. The steps have been on the Property for many years and no objections were noted in the record. There is also a gap between

the front property line and the edge of paving so the encroachment is likely not as noticeable as it otherwise would be. The encroachment of the property garage is also likely to have a minimal impact on the neighborhood. Only a corner of the garage will encroach into the setback area and the Applicant has consulted with and received consent from her neighbor to the east for this variance. There was no evidence as to why the variances for these structures would alter the alter the essential character of the neighborhood.

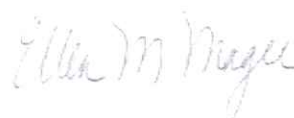
- f. The variances sought are the minimum variances necessary to afford relief and the variances requested represent the least modifications possible of the regulations at issue. The Applicant has demonstrated that the variances sought will allow her to retain a set of steps on the Property while also constructing a new garage. The Applicant is limited by the Property's unique conditions and the location of these structures minimizes the need to further encroach into the setback areas.
- 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, 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 August 17, 2020.