

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: EQUITY TRUST CO. (KENDA WEST)

(Case No. 12473)

A hearing was held after due notice on September 21, 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 requirements for a proposed structure.

Findings of Fact

The Board found that the Applicant is seeking a variance of 5.3 feet from the thirty (30) foot front yard setback requirement for a garage and a variance of 6 feet from the thirty (30) feet front yard setback requirement for a garage. This application pertains to certain real property located on the south side of Pine Grove Road within the Hollywoods Park subdivision (911 Address: 32622 Pine Grove Road, Laurel); said property being identified as Sussex County Tax Map Parcel Number 4-32-8.00-124.00. After a public 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 August 17, 2020, a survey of the Property dated May 29, 2020, notes from a soil site engineer, a letter from Kenda West, a septic drainage plan, a building permit, 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 Kenda West and Klay West were sworn in to give testimony about the Application.
4. The Board found that Ms. West testified that the request is for a garage adjacent to a home that is under construction. The house has been constructed but the garage is not yet complete.
5. The Board found that Ms. West testified that the Applicant understood from the building permit that there was a 30 foot setback from the road and not from the property line.
6. The Board found that Ms. West testified that the house is pushed back as far as possible based on the placement of the septic system.
7. The Board found that Ms. West testified that the house is 47 feet from the road.
8. The Board found that Ms. West testified that there was a misunderstanding about the property line.
9. The Board found that Ms. West testified that the Property is unique due to the shallow depth and the placement of the septic system.
10. The Board found that Mr. West testified that Pine Grove Road is only used for their neighborhood.
11. The Board found that Ms. West testified that other houses are less than 25 feet from the road and that there is a variety of positioning of houses.
12. The Board found that Ms. West testified that the garage would not be possible with a 30 foot setback from the property line.
13. The Board found that Ms. West testified that the exceptional practical difficulty was not caused by the Applicant but because of the septic design and misinformation given by the permitting department.

14. The Board found that Ms. West testified that the variances will not alter the essential character of the neighborhood.
15. The Board found that Ms. West testified that the variances requested are the minimum variances to afford relief.
16. The Board found that Mr. West testified that there is approximately 20 – 25 feet between the edge of paving and the property line and that the permit was received through the mail due to Covid-19 restrictions.
17. The Board found that no one appeared in support of or 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 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 due to the location of the septic system which requires that the dwelling and structures be placed close to the front portion of the lot. These conditions have created an unusually shaped and limited building envelope. Furthermore, the Applicant received misleading information on the building permit which states that the front yard setback is measured from the road and not the property line. The unique conditions of the lot have created an unnecessary hardship and exceptional practical difficulty for the Applicant who seeks to construct a garage 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 Property and the situation, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Applicant seeks to construct a garage on the lot but is unable to do so while complying with the Sussex County Zoning Code. The Board is thus convinced that the variances are necessary to enable the reasonable use of the Property as the variances will allow the Applicant to construct the garage on the lot. The Board is convinced that the size, shape, and location of the garage are reasonable.
 - d. The unnecessary hardship and exceptional practical difficulty were not created by the Applicant. As discussed above, the Property has unique conditions which have limited the Applicant's ability to reasonably develop the Property. The Applicant did not create the unique conditions of the lot. Furthermore, the Applicant relied to its detriment on the information contained in the building permit. The Board was convinced that the Applicant has not created the exceptional practical difficulty and unnecessary hardship. Furthermore, the Board is convinced that the Applicant did not come to the Property with an illegal use in mind. Rather, the Applicant is limited by the physical conditions of the Property.
 - 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 variances will have no effect on the character of the neighborhood. The variances will allow the garage to be placed in its proposed location near the house. The Board notes that structures on nearby properties appear to be similarly situated and that no substantial evidence was presented which demonstrates that the variances would somehow alter the essential character of the neighborhood or be detrimental to the public welfare. The Board also notes that the front property line does not match the edge of paving so the front yard appears larger than it actually is. As a result, the encroachments of the garage into the front yard setback are not as noticeable.

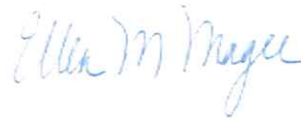
- f. The variances sought are the minimum variances necessary to afford relief and the variances requested represent the least modifications possible of the regulation at issue. The Applicant has demonstrated that the variances sought will allow the Applicant to construct a reasonably sized garage on the Property in a location where it can be best used.
- 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 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 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 November 16, 2020