

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

**IN RE: THOMAS C. NEWHART**

**(Case No. 12061)**

A hearing was held after due notice on November 20, 2017. The Board members present were: Mr. Dale Callaway, Ms. Ellen Magee, Mr. Bruce Mears, Mr. John Mills, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for a variance from the corner front yard setback requirement.

Findings of Fact

The Board found that the Applicants are seeking a variance of 3.4 feet from the fifteen (15) feet corner front yard setback requirement along County Route 228 for a garage. This application pertains to certain real property located on the southwest corner of Cedar Creek Road and Heritage Road (911 Address: 10541 Heritage Road, Lincoln); said property being identified as Sussex County Tax Map Parcel Number: 2-30-21.00-52.00.

1. The Board was given copies of the Application, an aerial photograph of the Property, a drawing of the Property, a letter from Christopher Waters, a survey of the Property dated September 2, 2017, 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 Nanette Newhart and Thomas Newhart were sworn in to testify about the Application.
4. The Board found that Mr. Newhart testified that the Property is triangularly shaped.
5. The Board found that Mr. Newhart testified that the dwelling was already on the lot and the garage is close to the entrance of the house. He wanted to construct a larger garage but was limited due to the lot.
6. The Board found that Mr. Newhart testified that the Property is wooded and the Property is served by a well and septic system.
7. The Board found that Mr. Newhart testified that he relied on a contractor to construct the garage. His contractor obtained the building permit.
8. The Board found that Mr. Newhart testified that the garage cannot be placed elsewhere on the lot.
9. The Board found that Mr. Newhart testified that there is a gap between the edge of paving of County Route 228 and the property line and the garage is at least 15 feet from the edge of paving of County Route 228.
10. The Board found that Mrs. Newhart testified that the garage will not impact any traffic views
11. The Board found that one (1) party appeared in support of the Application.
12. The Board found that no parties appeared in opposition to the Application.
13. 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 met the standards for granting a variance. The findings below further support the Board's decision to approve the Application.
  - a. The Property is clearly unique as it is a triangularly shaped lot with an odd building envelope. This unique shape greatly limits the building envelope of the Property. The building envelope is further limited by the location of a well and septic system and because the lot is a corner lot subject to additional setback requirements. These unique physical conditions have

created an unusual and limited building envelope for the Applicants and have created an exceptional practical difficulty for the Applicants.

- b. Due to the uniqueness of the Property, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The unique shape of the Property and the location of the well and septic system greatly limit the building envelope. The Applicants seek to retain a garage but are unable to do so without violating the Sussex County Zoning Code. The garage cannot be located elsewhere on the lot. The Board is convinced that the variance is necessary to enable the reasonable use of the Property as the variance will allow the garage to remain on the Property. The Board is convinced that the shape and location of this garage are reasonable, which is confirmed when reviewing the survey provided by the Applicants.
- c. The exceptional practical difficulty was not created by the Applicants. The Property has an unusual shape and is subject to building limitations due to the well and septic system and the corner yard setback requirements. These conditions have greatly constrained the building envelope on the Property and these unique physical conditions have created the exceptional practical difficulty for the Applicants. The Applicants also relied to their detriment on a builder to place the home in compliance with the Code only to find out about the violation after the garage is built.
- d. The variance 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 garage is located at least 15 feet away from the edge of paving of County Route 228 and it is unlikely that the encroachment would be noticed. The garage is also located away from the intersection with Route 30 and the unrebutted testimony and pictures confirm that the garage has no impact on traffic visibility. No complaints were noted in the record about the garage. Furthermore, no evidence was presented which would indicate that the variance would somehow alter the essential character of the neighborhood or be detrimental to the public welfare.
- e. The variance sought is the minimum variance necessary to afford relief and the variance requested represents the least modification possible of the regulation at issue. The Applicants have demonstrated that the variance sought will allow the Applicants to retain the existing garage. No additions or modifications to the garage are proposed.

The Board granted the variance application finding that it met the standards for granting a variance.

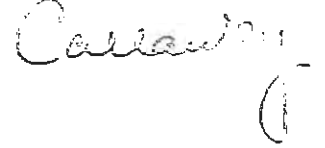
Decision of the Board

Upon motion duly made and seconded, the variance application was approved. The Board Members in favor were Mr. Dale Callaway, Ms. Ellen Magee, Mr. Bruce Mears, Mr. John Mills, and Mr. Brent Workman. No Board Member voted against the Motion to approve the variance application.

BOARD OF ADJUSTMENT  
OF SUSSEX COUNTY



Dale Callaway  
Chairman



If the use is not established within one (1)  
year from the date below the application  
becomes void.

Date January 23, 2018