

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: DOUGLAS BATES

(Case No. 12404)

A hearing was held after due notice on February 3, 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 and rear yard setback requirements for proposed and existing structures.

Findings of Fact

The Board found that the Applicant is requesting the following variances: 1) a variance of 5.1 feet from the ten (10) feet rear yard setback requirement for an existing garage; 2) a variance of 5.1 feet from the ten (10) feet rear yard setback requirement for a proposed garage; 3) a variance of 5.3 feet from the ten (10) feet side yard setback requirement on the south side for an existing garage; and 4) a variance of 4 feet from the ten (10) feet side yard setback on the north side for a proposed garage. The Property is located on the east side of Robinhood Loop within the Sherwood Forest North subdivision (911 Address: 32342 Robinhood Loop, Millsboro) said property being identified as Sussex County Tax Map Parcel Number: 2-34-23.00-198.00. After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, pictures, a survey of the Property dated December 27, 2019, drawings, a subdivision plan, 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 Douglas Bates was sworn in to testify about the Application.
4. The Board found that Mr. Bates testified that the Property is small in size and has many trees.
5. The Board found that Mr. Bates testified that the Property is also improved by a septic system. He knows where the septic tank is located but he was unsure of the exact placement of the septic field.
6. The Board found that Mr. Bates testified that he has owned the Property for 3 years and the garage was built by a prior owner.
7. The Board found that Mr. Bates testified that the garage would look odd and would be difficult to access if it was moved.
8. The Board found that Mr. Bates testified that constructing the new garage in compliance with the County Code would put the garage in the middle of the yard which would not be aesthetically pleasing.
9. The Board found that Mr. Bates testified that the placement of the proposed garage will align with the existing garage.
10. The Board found that Mr. Bates testified that the garage is also being placed at the rear of the Property to avoid interference with the septic field and that there is nowhere else to place the garage.
11. The Board found that Mr. Bates testified that the house was formerly a drug house and he has cleaned up the Property.
12. The Board found that Mr. Bates testified that the variances will not alter the essential character of the neighborhood as there are similar buildings in the area. He noted that there have been sheds on neighboring properties since the 1980s.

13. The Board found that Mr. Bates testified that the proposed garage will be behind the dwelling and, therefore, will not be seen from the road.
14. The Board found that Mr. Bates testified that the variances are the minimum variances to allow for this garage to be built.
15. The Board found that Mr. Bates testified that he plans to make the new garage taller and it will have a pole building design. The new garage will have 12 foot tall walls and will be 17.4 feet tall. The existing garage has 8 foot tall walls and is 12-13 feet tall.
16. The Board found that Mr. Bates testified that he has removed trees on the site and there is a large tree stump which would prevent building the garage in compliance.
17. The Board found that Mr. Bates testified that the septic is located in the center of the lot.
18. The Board found that Mr. Bates testified that the neighbors do not object to the request.
19. The Board found that Mr. Bates testified that he plans to add to the house in the future and that addition will take up part of the driveway.
20. The Board found that no one appeared in support of or in opposition to the Application.
21. The Board voted to leave the record open for the limited purpose of allowing the Applicant to submit information by February 28, 2020, regarding the location of the septic system and to place the application on the agenda for the meeting on March 2, 2020. A drawing was thereafter submitted showing the location of the septic system and drain field. On March 2, 2020, the Board discussed and voted on the Application.
22. 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 failed to meet the standards for granting a variance. The findings below further support the Board's decision to deny the Application.
 - a. The Applicant failed to prove that the Property could not be reasonably developed in strict conformity with the Sussex County Zoning Code. The Applicant proposes to construct a large garage on this lot and the garage will encroach significantly into the rear yard and side yard setback areas. This garage is in addition to an existing garage which also encroaches into the rear yard setback and the other side yard setback area. Effectively, the grant of this variance will create a wall of buildings along the rear of the Property outside the building envelope. While the Applicant argued that it was constrained by the size and conditions of the lot, the lot is a rectangular shaped lot with no unique conditions which appear to limit its development. Rather, the Applicant has chosen to use a significant portion of the lot for these structures. The Board was simply not convinced that the Applicant could not otherwise develop the Property in compliance with the Code. Likewise, the Board was not convinced that the variances are necessary to enable reasonable use of the Property.
 - b. The Board finds that the Applicant is creating his own exceptional practical difficulty by proposing to a develop the Property with the garages which do not fit within the building envelope. The Applicant's decision to construct the new garage on this site is the reason for the need for variances and has nothing to do with the size, shape, or condition of the Property. There is no unusual condition to the Property which has created this difficulty. The Board was not convinced that the variance request was the product of a *need*. Instead, the variance request appears to be the product of a *want* as the Applicant seeks to have the garages on the lot for purposes of convenience, profit, and / or caprice. The need for the variance is

something created by the Applicant's wants rather than an unusual physical condition relating to the Property. The Applicant has thus created his own exceptional practical difficulty.

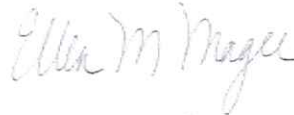
- c. Since the variances are not necessary to enable the reasonable use of the Property, the Board also finds that the variances requested are not the minimum variance necessary to afford relief. Furthermore, the Board finds that no variances are needed to afford relief since the Applicant failed to demonstrate that the Property could not otherwise be developed in compliance with the Sussex County Zoning Code.
- d. The denial of this variance application, however, shall not exclude the Applicant from seeking relief for an administrative variance for the existing garage under §115-181(e)(7).

The Board denied the variance application finding that it failed to meet the standards for granting a variance.

Decision of the Board

Upon motion duly made and seconded, the variance application was denied. The Board Members in favor of the motion to deny were Dr. Kevin Carson, Ms. Ellen Magee, and Mr. John Williamson. Mr. Jeffrey Chorman and Mr. Brent Workman voted against the Motion to deny 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 May 5, 2020.