

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

**IN RE: BELVA ROBINSON**

**(Case No. 12480)**

A hearing was held after due notice on October 5, 2020. The Board members present were: Dr. Kevin Carson, 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 requirement for an existing structure.

Findings of Fact

The Board found that the Applicant is requesting a variance of 1.1 foot from the fifteen (15) feet side yard setback requirement on the north side for an existing garage exceeding 600 square feet. This application pertains to certain real property located on the west side of Robinhood Road approximately 179 feet south of Oak Branch Road (911 Address: 36744 Robin Hood Road, Delmar) said property being identified as Sussex County Tax Map Parcel Number 5-32-14.00-15.07. After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a letter from William Griswold, a survey of the Property dated July 24, 2020, a building permit application, 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 Beverly Robinson was sworn in to testify about the Application.
4. The Board found that Ms. Robinson testified that the situation is unique as the house was built by her brother-in-law in 2000 and he divorced her sister in 2011. Her mother, Belva Robinson, later moved into the house and her sister died unexpectedly so the Property is now owned by her mother.
5. The Board found that Ms. Robinson testified that her mother went to sell the Property and discovered the encroachment when a recent survey was completed.
6. The Board found that Ms. Robinson testified that the garage was placed in its current location to preserve the existing tree-line on the Property.
7. The Board found that Ms. Robinson testified that there is no possibility that the Property can be developed in strict conformity with the Sussex County Zoning Code and the variance is necessary to enable reasonable use of the Property.
8. The Board found that Ms. Robinson testified that the Property cannot otherwise be developed as the garage has been in its current location for over twenty years.
9. The Board found that Ms. Robinson testified that the Applicant did not build the garage and the structure was built over 20 years ago.
10. The Board found that Ms. Robinson testified that the Property is serviced by well and septic system on the north side of the lot.
11. The Board found that Ms. Robinson testified that granting the variance will not alter the essential character of the neighborhood as there have been no complaints about the garage in its present location.
12. The Board found that Ms. Robinson testified that a letter of support was submitted by the adjoining neighbor.
13. The Board found that Ms. Robinson testified that the variance requested is the minimum variance necessary to allow the garage to remain.
14. The Board found that no one appeared in support of or opposition to the Application.



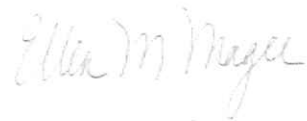
15. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, which the Board found credible, persuasive, and un rebutted, the Board determined that the application for the variance met the standards for granting a variance. The findings below further support the Board's decision to approve the Application for the variance.
- a. The Property is unique as the lot has trees in the rear of the lot which limit the developable area. Furthermore, the Property is improved by a septic system on the north side of the lot. These conditions have limited the area where a garage can be located. The situation is also unique as the garage was constructed 20 years ago by a prior owner and the encroachment was recently discovered. Notably, if the encroachment was only 0.1 foot less, an administrative variance could be granted. The unique conditions the lot and the unique situation have created an exceptional practical difficulty and an unnecessary hardship for the Applicant who seeks to retain the garage but cannot do so in compliance with the Sussex County Zoning Code.
  - 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 retain the garage but is unable to do so without violating the side yard setback requirement. The variance is thus necessary to enable reasonable use of the Property. The Board is convinced that the shape and location of the garage are also reasonable (which is confirmed when reviewing the survey).
  - d. The unnecessary hardship and exceptional practical difficulty were not created by the Applicant. The Property has unique conditions which greatly limit the buildable area thereof. This unnecessary hardship and exceptional practical difficulty were created by the unique conditions of the Property. The Applicant did not place the garage on this lot either.
  - e. 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 Board is convinced that the structure will not have a negative impact on the neighborhood. 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. A neighbor has even submitted a letter supporting the request. Furthermore, the encroachment is only for a corner of the garage and is unlikely to be noticed without a survey.
  - f. The variance sought is the minimum variance necessary to afford relief and the variance requested represents the least modification possible of the regulations at issue. The Applicant has demonstrated that the variance sought will allow the Applicant to retain the garage on the Property. No additions or modifications to the garage 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 the variance were Dr. Kevin Carson, Ms. Ellen Magee, Mr. John Williamson, and Mr. Brent Workman. No Board Member voted against the Motion to approve the variance application. Mr. Jeffrey Chorman did not participate in the discussion or vote on this 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 December 14, 2020