

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

**IN RE: MARVIN WEAVER**

**(Case No. 12092)**

A hearing was held after due notice on February 5, 2018. The Board members present were: Mr. Dale Callaway, Mr. Bruce Mears, Mr. John Mills, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for variances from the side yard and rear yard setback requirements.

Findings of Fact

The Board found that the Applicant is seeking a variance of 1.0 feet from the ten (10) feet side yard setback requirement on the southwest side for a proposed garage addition, a variance of 1.8 feet from the ten (10) feet rear yard setback requirement for an existing dwelling, and a variance of 1.5 feet from the ten (10) feet rear yard setback requirement for a proposed addition. This application pertains to certain real property located on the north side of Marina Drive, approximately 450 feet west of the intersection of Woodland Circle and Marina Drive West. (911 Address: 23406 Marina Drive West, Lewes); said property being identified as Sussex County Tax Map Parcel Number 2-34-17.08-127.00.

1. The Board was given copies of the Application, a survey of the Property dated June 16, 2017, a building permit application, a property record card, a survey of the Property dated November 15, 2017, 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 Jay Yoder was sworn in to testify about the Application and submitted the proposed building plans into the record for the Board to review.
4. The Board found that Mr. Yoder testified that he was present on behalf of the Applicants and that he is the owner of Yoder & Sons Construction.
5. The Board found that Mr. Yoder testified that the Applicants purchased the Property within the past year and propose to construct an addition to the garage. At the time the Applicants purchased the Property, they were unaware of the rear yard encroachment because they did not obtain a survey. The Applicants intend to use the garage for a boat and the rear of the addition will be used for bedrooms.
6. The Board found that Mr. Yoder testified that the Board has approved many variances in the Angola by the Bay community.
7. The Board found that Mr. Yoder testified that the rear of the Property is adjacent to common area and that the variances will not affect anyone to the rear of the Property.
8. The Board found that Mr. Yoder testified that the dwelling is an existing dwelling and the Applicants propose to add the garage and to add a rear addition to square up the home.
9. The Board found that Mr. Yoder testified that the Applicants did not create the hardship.
10. The Board found that Mr. Yoder testified that the Applicants are making other improvements to the home.
11. The Board found that Mr. Yoder testified that the Property slopes significantly.
12. The Board found that Mr. Yoder testified that the Property is a smaller than average lot and the Property cannot otherwise be developed.

13. The Board found that Mr. Yoder testified that the variances will not alter the essential character of the neighborhood and the variances requested represent the minimum variances necessary to afford relief.
14. The Board found that no parties appeared in support of or in opposition to the Application.
15. The Board voted to leave the record open and to reschedule a hearing on the Application. A second public hearing was held on the Application on April 16, 2018, at which time Jay Yoder was sworn in to testify about the Application. David Hutt, Esquire, presented the case on behalf of the Applicant and submitted exhibits for the Board to review.
16. The Board found that Mr. Hutt stated that the initial request included a side yard variance request for the garage but the Applicants have revisited the planned addition and garage. The proposed garage will now comply with the side yard setback requirement and no variance is needed for the garage. Rear yard variances are still needed for the dwelling and proposed addition.
17. The Board found that Mr. Hutt stated that the homeowners association approved the proposal structure.
18. The Board found that Mr. Hutt stated that Angola by the Bay was created prior to the enactment of the Sussex County Zoning Code and the dwelling was constructed in 1979. An addition was constructed in 1985 and a certificate of occupancy was issued at that time.
19. The Board found that Mr. Hutt stated that the rear of the house would have to be demolished to bring the home into compliance with the Code.
20. The Board found that Mr. Hutt stated that the Applicants proposed to square off the rear of the home with the proposed addition. The addition will be modest in size.
21. The Board found that Mr. Hutt stated that the Property is unique in the arrangement of the existing structures and since a certificate of occupancy was previously issued.
22. The Board found that Mr. Hutt stated that the variances are necessary to enable the reasonable use of the Property.
23. The Board found that Mr. Hutt stated that the exceptional practical difficulty was not created by the Applicant and that the present structure was not constructed by the Applicant.
24. The Board found that Mr. Hutt stated that the variances will not alter the essential character of the neighborhood as there have been approximately 50 variances approved in the community since 2011. Furthermore, the addition cannot be seen from other properties since the rear of the Property abuts to common area.
25. The Board found that Mr. Hutt stated that the variances requested represent the minimum variances necessary to afford relief.
26. The Board found that Mr. Yoder affirmed the statements made by Mr. Hutt as true and correct
27. The Board found that no parties appeared in support of or in opposition to the Application.
28. 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 rear yard variances. The findings below further support the Board's decision to approve the rear yard variance requests.
  - a. The Property is unique due to its size and shape. The Property is small and shallow. Notably, if the Property consisted of 182 fewer square feet, no variance would be needed from the rear yard setback requirement. The situation is also unique because the Property is located in a community with predates the enactment of the Sussex County Zoning Code and the rear

yard is adjacent to common area. The unique characteristics of this Property have created an exceptional practical difficulty for the Applicant who seeks to retain the existing dwelling on the lot and to construct a reasonably sized addition.

- b. 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 and shape and the buildable area thereof is limited due to these conditions. The Applicants seek to retain a dwelling of reasonable size and to construct a reasonably sized addition but are 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 dwelling to remain on the Property and for the addition to be constructed. 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 Applicants.
  - c. The exceptional practical difficulty was not created by the Applicants. The Applicants did not create the unusual size and shape of the Property nor did the Applicants construct the existing dwelling. The Applicants only recently acquired the Property. The unique lot conditions have resulted in a limited building envelope on the Property and these conditions have created the exceptional practical difficulty. The unique characteristics of the Property are clear when reviewing the survey. The Board is convinced that the exceptional practical difficulty was not created by the Applicants but was created the lot's unique characteristics. The Board also notes that the dwelling was placed on the Property by a prior owner who obtained a Certificate of Compliance from Sussex County and the prior owner likely reasonably believed that the dwelling thus complied with the zoning requirements.
  - d. 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 dwelling and addition will have no effect on the character of the neighborhood. Despite the fact that the dwelling has been on the Property since 1979 and neighbors have been notified of this Application, no evidence was presented that the variances would somehow alter the essential character of the neighborhood. The Board also notes that the homeowners association has approved this request. Furthermore, the rear of the Property abuts common area so the encroachments are likely less noticeable than would otherwise be the case.
  - e. 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 Applicants have demonstrated that the variances sought will allow the Applicants to retain a reasonably sized dwelling and to construct a reasonably sized addition on the Property. The dwelling cannot be moved into compliance with the zoning requirements and the addition encroaches no farther into the setback area than the existing dwelling.
29. 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 side yard variance request failed to meet the standards for granting a variance. The findings below further support the Board's decision to deny the side yard variance request.
- a. Since the filing of the Application, the Applicants have revisited their plans and reduced the size of the garage so that it no longer encroaches into the

side yard setback area. Accordingly, it is clear that the garage can be constructed in conforming with the Sussex County Zoning Code and that the side yard variance is not necessary to enable reasonable use of the Property.

- b. Likewise, the side yard variance is not the minimum variance necessary to afford relief since the garage will be constructed in compliance with the Sussex County Zoning Code. Rather, no variance is needed from the side yard setback requirement.

The Board granted the rear yard variance application finding that it met the standards for granting a variance but the Board denied the side yard variance application.

Decision of the Board

Upon motion duly made and seconded, the variance application was approved in part and denied in part. The Board Members in favor were Mr. Dale Callaway, Mr. Bruce Mears, and Mr. Brent Workman. No Board Member voted against the Motion to approve the variance application in part and to deny the variance request in part. Ms. Ellen Magee and Mr. John Mills did not participate in the discussion or vote of this application.

BOARD OF ADJUSTMENT  
OF SUSSEX COUNTY

  
Dale Callaway  
Chairman

If the use is not established within two (2) years from the date below the application becomes void.

Date June 19, 2018