

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: JONATHAN ZELEZNICK & KATHRYN ZELEZNICK

(Case No. 12331)

A hearing was held after due notice on July 1, 2019. 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 house.

Findings of Fact

The Board found that the Applicants are requesting a variance of ten (10) feet from the thirty (30) feet front yard setback requirement for a proposed garage. This property is located west side of Wango Lane at the west end of Bow Street in the Holly Ridge Terrace subdivision (911 Address: 31248 Wango Lane, Ocean View); said property being identified as Sussex County Tax Map Parcel Number 1-34-9.00-166.00. After a hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a letter from the Applicants, drawings of the proposed house, a boundary survey and site plan dated June 18, 2019, 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 Jonathan Zeleznick was sworn in to give testimony about the Application.
4. The Board found that Mr. Zeleznick testified that he wants to build a new house on this Property and will need a variance in the front of the Property for the proposed garage.
5. The Board found that Mr. Zeleznick testified that the Property is unique because the bulkhead is recessed on the back property line.
6. The Board found that Mr. Zeleznick testified that the bulkhead is shared with a neighbor.
7. The Board found that Mr. Zeleznick testified that there is an existing concrete pad which is the planned location for a shed.
8. The Board found that Mr. Zeleznick testified that, if the house was built in compliance with the Code, he would not be able to use the pad.
9. The Board found that Mr. Zeleznick testified that the Property cannot otherwise be developed for this home design and to allow for a shed in the rear without this variance. He admitted that he chose the house design and that he can move the shed.
10. The Board found that Mr. Zeleznick testified that the lot is vacant.
11. The Board found that Mr. Zeleznick testified that he cannot fit a boat in a smaller shed.
12. The Board found that Mr. Zeleznick testified that the neighbors have no complaints regarding the house design and that the variance will not alter the essential character of the neighborhood.
13. The Board found that Mr. Zeleznick testified that the site is served by public sewer and water.

14. The Board found that Mr. Zeleznick testified that this request is the least modification that will afford relief.
15. The Board found that Mr. Zeleznick testified that there is no flooding on the Property.
16. The Board found that no one appeared in support of or in opposition to the Application.
17. 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 Board was not convinced that there was some unique physical condition related to the Property which has created an exceptional practical difficulty. The Property is a vacant, rectangular lot with no unusual shape. While the rear of the property is adjacent to a lagoon, there was no evidence of flooding and the Property is not served by well and septic which would otherwise limit the building envelope. As such, the Board was not convinced that there was some unique condition which has created an exceptional practical difficulty. Rather, the difficulty appears to be due to the Applicant's desire to place a shed on an existing concrete pad and, thus, move the location of the house closer to the front lot line. The Applicant, however, has admitted that the location of the shed could be moved elsewhere. The difficulty, if any, appears to be entirely self-created by the Applicants' desire to exceed the setback requirements set forth in the Sussex County Zoning Code by placing the garage in the setback area rather than in the building envelope.
 - b. The Applicants failed to prove that the garage could not be built in strict conformity with the Sussex County Zoning Code. The Property is a vacant lot with no apparent unique condition would limit the ability of the Applicants to construct a house and garage on the lot in compliance with the Code. The Applicant testified that he wanted to build a shed in a certain location and the proposed location of the shed has caused the proposed location of the house to be moved forward. The Applicant also testified that he could move the location of the shed. The survey and site plan demonstrate that the building envelope could fit the proposed house and shed without a variance. For these reasons, the Board finds that the Property could be developed in strict conformity with the Code and that the variance is not necessary to enable reasonable use of the Property.
 - c. The Board finds that the Applicants are creating their own exceptional practical difficulty by proposing to a construct a garage which does not fit within the building envelope. The Applicants' decision to construct a garage in this location is the reason for the need for a variance 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 lot is a vacant rectangular lot and the building envelope appears to otherwise be able to fit the house, garage, and shed without the need for the variance. 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 Applicants seek to build the garage as proposed for purposes of convenience, profit, and / or caprice. Since the Applicants can build a garage that can comply the Sussex County Zoning Code, the need for the variance is something created by the Applicants' wants rather than an unusual physical condition relating to the Property. The Applicants have thus created their own exceptional practical difficulty. The Board also notes that the Applicants chose the design of the house and garage.

- d. Since the variance is not necessary to enable the reasonable use of the Property, the Board also finds that the variance requested is not the minimum variance necessary to afford relief. Furthermore, the Board finds that no variance is necessary to afford relief since there is space to build a reasonably sized garage on the Property in compliance with the Sussex County Zoning Code.

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, Mr. Jeffrey Chorman, Ms. Ellen Magee, Mr. John Williamson, and Mr. Brent Workman. No Board Member voted against the Motion to deny the variance application.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY

Ellen M Magee

Ellen M. Magee
Chair

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

Date August 20, 2019