

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: LIA LEHENBAUER & VERA LEHENBAUER

(Case No. 12465)

A hearing was held after due notice on September 14, 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 a proposed garage.

Findings of Fact

The Board found that the Applicants are requesting a variance of 10 feet from twenty (20) feet rear yard setback requirement and a variance of 8 feet from the fifteen (15) feet side yard setback requirement for a proposed garage. The Property is located on the southwest side of Shockley Road approximately 516 feet northwest of Cedar Neck Road (911 Address: 22134 Shockley Road, Milford) said property being identified as Sussex County Tax Map Parcel Number: 3-30-8.00-17.10. After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a letter from the Applicants, pictures of the Property, a survey of the Property dated August 4, 2015, 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 Lia Lehenbauer and Vera Lehenbauer were sworn in to give testimony about the Application.
4. The Board found that Lia Lehenbauer testified that the request is for a proposed two-car garage measuring 24 feet by 30 feet.
5. The Board found that Lia Lehenbauer testified that, if the garage was built according to County Code, there would be a lot of their property behind the garage that the Applicants would not be able to use or enjoy.
6. The Board found that Lia Lehenbauer testified that the Applicants wish to maximize the space near the house for a future patio and for gardening.
7. The Board found that Lia Lehenbauer testified that, if the garage was built in compliance with the Code, it would also be too close to the house.
8. The Board found that Lia Lehenbauer testified that the design of the garage will match the house so it will not affect the essential character of the neighborhood.
9. The Board found that Lia Lehenbauer testified that they removed a shed which was located on the property line and was placed by a prior owner.
10. The Board found that Lia Lehenbauer testified that there is no garage on the lot.
11. The Board found that Vera Lehenbauer testified that she and her sister have owned the Property for five years but have lived at this address for two years.
12. The Board found that Vera Lehenbauer testified that the Applicants have made a lot of improvements to the Property and have planted many trees.
13. The Board found that Vera Lehenbauer testified that the Applicants want to enjoy the rear yard.
14. The Board found that Vera Lehenbauer testified that the Applicants have 2 cars so the 2 car garage is needed.
15. The Board found that Lia Lehenbauer testified that the well and septic are on the right side of the Property so the garage cannot be located there.

16. The Board found that Lia Lehenbauer testified that the neighbors have no issues with the request for a variance.
17. The Board found that no one appeared in support of or opposition to the Application.
18. The Board left the record open until September 14, 2020, at which time a second hearing was held on the matter. No additional comments or evidence were submitted into the record at that time.
19. 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 unique as the well and septic system are located near the center of the lot, which greatly reduce the building envelope. The Property also has many trees and shrubs which further limit the developable area of the lot. The lot's unique conditions limit the buildable area available to the Applicants and have created an unnecessary hardship and an exceptional practical difficulty for the Applicants who seek to construct a reasonably sized garage on the lot.
 - 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 lot, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property has unique conditions and the buildable area thereof is limited due to those conditions. The Applicants seek to construct a reasonable garage 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 reasonable garage to be constructed on the Property. The Board is convinced that the shape and location of the garage are also reasonable, which is confirmed when reviewing the survey provided by the Applicants. A two-car garage is also needed because the Applicants have 2 cars. Furthermore, if the garage was built in conformity with the Code, the garage would be too close to the house to be used for its intended purpose.
 - d. The unnecessary hardship and exceptional practical difficulty were not created by the Applicants. The Applicants did not create the unusual conditions of the Property. Rather, those conditions were created by a prior owner. The unique conditions of the Property is clear when reviewing the survey. The Board is convinced that the unnecessary hardship and exceptional practical difficulty were not created by the Applicants but were created by the lot's unique characteristics.
 - e. 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 garage will have no effect on the character of the neighborhood. The garage will match the house and will be located near where a prior shed was located. The shed was actually closer to the property line than the garage. There was no evidence submitted into the record that the variances would somehow affect the neighborhood or alter the essential character of the neighborhood.
 - f. The variances are the minimum variances necessary to afford relief and the variances represent the least modifications possible of the regulations at issue. The Applicants have demonstrated that the variances will allow the Applicants to construct a garage on the Property. The garage will be set

back far enough from the property lines to still allow for access to the garage with a car while providing a safe distance from the house.

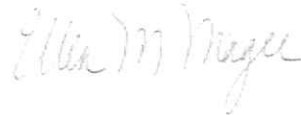
- g. The condition or situation of the Property and the intended use of the Property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the Sussex County Zoning Code.

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 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 approve 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 November 2, 2020