

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

**IN RE: CARL ANDERSON & MARIA ANDERSON**

**(Case No. 12495)**

A hearing was held after due notice on November 16, 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 requirement for a proposed structure.

Findings of Fact

The Board found that the Applicants are requesting a variance of 6.9 feet from the fifteen (15) feet side yard setback requirement on the southeast side and a variance of 7.1 feet from the fifteen (15) feet side yard setback requirement on the southeast side for a proposed attached garage. At the hearing, staff and counsel for the Plaintiff mistakenly stated that the Applicants needed a variance of 7.9 feet from the side yard setback requirement but, based on the review of the survey presented by the Applicants, the variances needed are actually 6.9 feet and 7.1 feet from the 15 foot side yard setback requirement. This application pertains to certain real property located on the southwest side of Locust Street within the Woodland Heights Subdivision (911 Address: 10116 Locust Street, Laurel) said property being identified as Sussex County Tax Map Parcel Number 2-32-12.18-29.01. After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a deed to the Property, a survey of the Property dated September 30, 2020, a building permit application, drawings, a septic placement plot plan dated September 4, 2008, a survey of the Property dated October 14, 2020, 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 Maria Anderson was sworn in to testify about the Application. Shannon Carmean Burton, Esquire, appeared on behalf of the Applicants
4. The Board found that Mrs. Burton stated that the Applicants have owned the Property since 2008 and that the Property is improved with a dwelling but there is no garage existing on the Property.
5. The Board found that Mrs. Burton stated that the Applicants are seeking the variance in order to construct a two car garage.
6. The Board found that Mrs. Burton stated that the Property is unique as it is a rectangular lot located in the Woodland Heights subdivision and the location of the septic system prevents moving the proposed garage to another location on the Property.
7. The Board found that Mrs. Burton stated that an exceptional practical difficulty exists due to the uniqueness of the Property.
8. The Board found that Mrs. Burton stated that a two-car garage is a reasonable addition to the Property but it cannot otherwise be developed.
9. The Board found that Mrs. Burton stated that the exceptional practical difficulty was not created by the Applicants as they had no control over the size of the lot or the placement of the septic system.
10. The Board found that Mrs. Burton stated that granting the variance will not alter the essential character of the neighborhood as there are other garages in the area and it will enhance the Applicants' property and increase its value.



11. The Board found that Mrs. Burton stated that the variance will not be detrimental to the public welfare.
12. The Board found that Mrs. Burton stated that the variances are the minimum requests to construct a two-car garage to park the Applicants' cars and for storage of other personal items and that the variances represent the least modifications of the regulation at issue.
13. The Board found that Ms. Anderson affirmed the statements made by Ms. Carmean Burton as true and correct.
14. The Board found that Ms. Anderson testified that a single car garage would be in compliance with County Code but that would not address the Applicants' need for storage in addition to housing both cars.
15. The Board found that Ms. Anderson testified that the sheds are located away from the septic system but the septic tanks take up much of the rear yard.
16. The Board found that Ms. Anderson testified that that no HOA approval is needed and that neighbors support the request.
17. The Board found that no one appeared in support of or opposition to the Application.
18. 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 it is improved by a septic system which is located behind the dwelling and occupies a significant portion of the rear yard. These conditions have limited the area where a garage can be located. The unique conditions the lot and the unique situation have created an exceptional practical difficulty and an unnecessary hardship for the Applicants who seeks to construct the two-car 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 Applicants seeks to construct the two-car garage but are unable to do so without violating the side yard setback requirement. The variances are 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). The Board notes that a one-car garage would not accomplish the Applicants' goals of housing both their vehicles and other personal items.
  - d. The unnecessary hardship and exceptional practical difficulty were not created by the Applicants. The Property has unique conditions which greatly limits the buildable area thereof. This unnecessary hardship and exceptional practical difficulty were created by the unique conditions of the Property. The location of the septic system has greatly limited the developable area of the lot.
  - 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 structure will not have a negative impact on the neighborhood. No evidence was presented which would indicate that the variances would somehow alter the essential character of the neighborhood or be detrimental to the public welfare. The Applicant testified that there are similar garages in the neighborhood as well.

- f. 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 construct the garage on the Property. The garage is reasonable in size and is large enough to store the Applicants' vehicles and personal items.
- 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.
- h. By way of clarity, the variances approved are a variance of 6.9 feet from the fifteen (15) feet side yard setback requirement on the southeast side and a variance of 7.1 feet from the fifteen (15) feet side yard setback requirement on the southeast side for a proposed attached garage.

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 Mr. Jeffrey Chorman, Ms. Ellen Magee, Mr. John Williamson, and Mr. Brent Workman. Dr. Kevin Carson voted against the Motion to approve the variance application.

BOARD OF ADJUSTMENT  
OF SUSSEX COUNTY



John Williamson  
Acting Chair

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

Date January 25, 2021.