

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

**IN RE: CYNTHIA PARR**

**(Case No. 12497)**

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 a variance from the side yard setback requirement for a proposed structure.

Findings of Fact

The Board found that the Applicant is requesting a variance of 3 feet from the fifteen (15) feet side yard setback requirement on the east side for a proposed addition to the attached garage. This application pertains to certain real property located on the south side of Regatta Bay Boulevard within the Heron Bay Subdivision (911 Address: 30162 Regatta Bay Boulevard, Lewes); said property being identified as Sussex County Tax Map Parcel Number 2-34-5.00-273.00. After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, an aerial photograph of the Property, a survey of the Property dated February 17, 2009, a letter from the Heron Bay Architectural Review Committee, and a portion of the tax map of the area.
2. The Board found that the Office of Planning & Zoning received no letters in support of or in opposition to the Application.
3. The Board found that Daniel Kaynan and Cynthia Parr were sworn in to testify about the Application. Ms. Parr appeared via teleconference.
4. The Board found that Ms. Parr testified that she applied to the homeowner association's architectural review committee ("ARC") but was denied because the addition does not meet the restrictive covenants.
5. The Board found that Ms. Parr testified that this request is for approval of a minor encroachment into the side yard setback.
6. The Board found that Ms. Parr testified that this side of the lot abuts a vacant lot and, therefore, granting the variance will not cause an adverse effect on the adjoining neighbor.
7. The Board found that Ms. Parr testified that the adjoining neighbor submitted a letter of support to the ARC.
8. The Board found that Ms. Parr testified that granting this variance will have no impact on the County's 10 foot maintenance easement located on the vacant lot to the west of the Property.
9. The Board found that Ms. Parr testified that the existing garage is very small and this variance would allow for a small addition so that cars can be parked in the garage and for some additional storage.
10. The Board found that Ms. Parr testified that she plans to retire to the Property. The house was built in 2007 and the Applicant acquired the Property in April 2015.
11. The Board found that Ms. Parr testified that the addition will be an enhancement to the Property.
12. The Board found that Ms. Parr testified that Sussex County Code supersedes the HOA regulations.
13. The Board found that Ms. Parr testified that the exceptional practical difficulty was not created by the Applicant but by the previous owners who built the house and placed it in its current location.

14. The Board found that Ms. Parr testified that she could build to the side yard setback line and would have a 17 foot wide garage.
15. The Board found that Ms. Parr testified that there is public water and sewer on the Property.
16. The Board found that Ms. Parr testified that she cannot build in the rear yard due to other uses.
17. The Board found that Ms. Parr testified that a detached garage cannot be placed on the Property as there would be no point of access.
18. The Board found that Ms. Parr testified that she can fit a car in the garage now but would not have room for storage and she needs the additional space for a second car.
19. The Board found that Ms. Parr testified that she is considering a shed in the rear yard and an addition to the house.
20. The Board found that Mr. Kaynan testified that the existing garage is 12 feet wide and the Applicant wants to increase it to 20 feet wide to be able to fit a double car garage door and fit two cars in the garage and that, without the variance, the garage could only be increased by 5 feet which would not fit the door and two cars within the space. According to Mr. Kaynan, the garage door is currently 8 feet wide and he could fit a 16 foot wide garage door if the garage was 17 feet wide but it would be tough to open the car doors.
21. The Board found that Ms. Parr testified that there are 1 car and 2 car garages in the neighborhood and that she admits that there are no variances in the neighborhood.
22. The Board found that Mr. Harry Jones was sworn in to give testimony in opposition to the Application.
23. The Board found that Mr. Jones testified that he was a member of the Heron Bay ARC in 2018 and the Applicant applied for a variance of 6 feet which was rejected by the committee. The ARC has also rejected the Applicants' current request for 3 feet.
24. The Board found that Mr. Jones testified that the development was created in 2006 and the setback is 15 feet per HOA restrictions and by County Code.
25. The Board found that Mr. Jones testified that the Applicant is trying to override the HOA restrictions by applying to the County for a variance.
26. The Board found that Mr. Jones testified that granting this variance would set a precedent for the development and he believes others will also seek similar relief.
27. The Board found that Mr. Jones testified that there are no other variances in the community.
28. The Board found that Mr. Jones testified that that other lots in the neighborhood only have one-car garages. Mr. Jones has a two-car garage on his lot but, per his testimony, the garage meets the setback requirements.
29. The Board found that no one appeared in support of and one person appeared in opposition to the Application.
30. 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 Applicant failed to demonstrate that the Property was unique and that the uniqueness of the Property has created an exceptional practical difficulty. The lot is a lot measuring 100 feet wide by approximately 200 feet deep and is largely rectangular. The Applicant did not present evidence of unique topography or other conditions which would effectively limit her ability to develop the Property and which created an exceptional practical difficulty. Rather, the difficulty is clearly the result of the Applicant's intention to construct an addition to the garage within the setback areas. The Board notes that the Applicant argued that she did not place the home on the lot

but the home is only 15.9 feet from the side property line on the other side of the lot. Effectively the dwelling and attached garage occupy most of the width of the building envelope already. The lot is not encumbered by a well or septic which would limit other developable areas of the lot. As such, the Applicant has failed to demonstrate that there was some unique condition which has created the exceptional practical difficulty.

- b. The Applicant failed to prove that the Property could not be developed in strict conformity with the Sussex County Zoning Code. Rather, the Property is already developed in strict conformity with the Code using most of the width of the building envelope on a large, rectangular lot. The Applicant now seeks to add onto her existing garage. The addition, however, does not fit within the building envelope and will encroach into the side yard setback area. The Applicant argues that a wider garage is needed to use the garage for two cars but the Applicant failed to demonstrate that there was no other way to reasonably develop the lot without a variance or that the variance was necessary to reasonably use the Property. While the garage may be smaller than the Applicant seeks, the Applicant can build an addition to the garage which would afford her more storage space than is currently offered by her garage and still house one car. The Applicant has also admitted that she may seek to use other part of the lot for a shed for additional storage. The Board was simply not convinced that the Applicant could not otherwise develop the Property in compliance with the Code. Perhaps the garage would not be in the exact location where the Applicant want it to be located or be the size the Applicant wish but the Property appears to have a large enough building envelope for the Applicant to develop the Property in compliance with the Sussex County Zoning Code. The Applicant is not entitled to have a two-car garage rather than a one-car garage. 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 Applicant is creating her own exceptional practical difficulty by proposing to construct a garage addition which does not fit within the building envelope. The Applicant's decision to construct this addition 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 building envelope appears to otherwise be able to fit a garage, albeit a smaller garage than the one preferred by the Applicant, 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 Applicant seeks to build the garage addition as proposed for purposes of convenience, profit, and / or caprice. Since the Applicant can develop the Property in compliance with the Sussex County Zoning Code, the need for the variance is something created by the Applicant's wants rather than an unusual physical condition relating to the Property. The Applicant has thus created her own exceptional practical difficulty.
- d. The Board finds that the Applicant failed to demonstrate that the variance would not alter the essential character of the neighborhood. The Applicant's lot is within a deed-restricted community and she has admitted that no other similar variances have been granted therein. A neighbor testified that there are other garages in the neighborhood but they comply with the setback requirements. It was clear to the Board that there are one-car and two-car garages in the neighborhood. The opposition argued that granting this

- variance would encourage others to do the same and the Board shares this concern; particularly with the lack of uniqueness with this lot being apparent.
- e. 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 needed to afford relief since there is space to add space to the 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



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.