

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: TODD SCHULTZ

(Case No. 12528)

A hearing was held after due notice on February 15, 2021. The Board members present were: Dr. Kevin Carson, Mr. Jeff Chorman, Mr. John T. Hastings, Mr. John Williamson, and Mr. Brent Workman.

Nature of the Proceedings

This is an application from the side yard setback requirements for proposed and existing structures.

Findings of Fact

The Board found that the Applicant is requesting is requesting the following variances: 1) a variance of 8.07 feet from the fifteen (15) feet side yard setback requirement for a proposed attached garage extension; 2) a variance of 8.08 feet from the fifteen (15) feet side yard setback requirement for a proposed attached garage extension; 3) a variance of 3 feet from the five (5) feet side yard setback requirement for an existing shed; and 4) a variance of 2 feet from the five (5) feet side yard setback requirement for an existing shed. This property located on the southwest side of Circle Drive West within the Hunters Mill Estates Subdivision (911 Address: 40 Circle Drive West, Milton) said property being identified as Sussex County Tax Map Parcel Number 2-35-30.00-265.00. After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a survey of the Property dated December 2, 2020, an application to the homeowners association, a photograph, correspondence supporting the Application, 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 four (4) letters in support of and no correspondence in opposition to the Application.
3. The Board found that Todd Schultz and Tina Schultz were sworn in to testify about the Application.
4. The Board found that Mr. Schultz testified that the Applicants have owned the Property for 30 years and are now full-time residents. They seek to expand the existing one-car garage to enable them to park a second car in the garage.
5. The Board found that Mr. Schultz testified that the Property is located off a cul-de-sac.
6. The Board found that Mr. Schultz testified that he spoke with neighbors and they support the request.
7. The Board found that Mr. Schultz testified that the Property is unique because it is narrow and narrows towards the rear.
8. The Board found that Mr. Schultz testified that the septic system is located behind the deck and there is an underground propane tank behind the garage as well. He noted that the location of the septic tank and propane tank limit the options where the garage addition can be located.
9. The Board found that Mr. Schultz testified that the garage will match the materials of the existing house.
10. The Board found that Mr. Schultz testified that the placement of the dwelling prevents a garage from being placed in another location as well.
11. The Board found that Mr. Schultz testified that the exceptional practical difficulty was not created by the Applicant but by the placement of the dwelling and septic on the Property.

12. The Board found that Mr. Schultz testified that the dwelling has been in place since 1996 and the shed was placed in 1997.
13. The Board found that Mr. Schultz testified that the variances will not alter the essential character of the neighborhood as the addition will be an extension of the existing garage and will be finished to match the existing dwelling and garage.
14. The Board found that Mr. Schultz testified that the variances requested are the minimum variances to allow for a 14 foot extension to the garage and that the variances will allow the garage to be more usable and aesthetically pleasing.
15. The Board found that Mr. Schultz testified that there are no complaints from the neighbors regarding the proposal and that the homeowners' association has approved the request. He also noted that four letters of support were included with the Application and that the neighbor most impacted by the request for the variances was present to show her support for the Application.
16. The Board found that Mr. Schultz testified that the shed cannot be moved but they have received no complaints about the shed and that it does not impact neighboring properties.
17. The Board found that one person appeared in support of and no one appeared in 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 due to its shape and development. The Property is oddly shaped as it has a curved front property line and a narrow rear yard. The lot is also improved by a septic system and propane tank, which are located in the middle of the lot. These unique characteristics of this Property have created a limited building envelope and have created an unnecessary hardship and exceptional practical difficulty for the Applicants who seek to construct a garage addition and to retain a shed 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 physical characteristics and the buildable area thereof is limited due to those characteristics. The Applicants seek to construct an addition to the garage and to retain a shed on the lot 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 this reasonably sized garage addition to be placed on the lot and to retain a reasonably sized shed on the lot. 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. The Board notes that the shed provides functional storage for the Applicants and the garage will enable the Applicants to park a second car on the lot in a garage. The Applicants would otherwise be unable to do so without a variance due to the unique conditions of the lot.
 - d. The unnecessary hardship and exceptional practical difficulty were not created by the Applicants. The Property is oddly shaped and these conditions have resulted in a limited building envelope on the Property. The limited building envelope is further exacerbated by the location of the septic system and propane tank. These conditions have created the unnecessary hardship and exceptional practical difficulty. Furthermore, the Applicants

are constrained by the location of the existing residence which also presents challenges on where those structures can be located.

- 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 shed and garage addition will have no effect on the character of the neighborhood. The garage addition will be designed to match the dwelling and the shed has been located on the lot without complaint since 1997. The Board notes that neighbors and the homeowners association have indicated support of the Application and no evidence was presented that the variances would somehow alter the essential character of the neighborhood. The neighbor most impacted has indicated support of the Application to the Applicants.
- 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 a reasonably sized garage addition to park a second car and to retain the shed on the Property. The Board is convinced that the Applicants explored other options for the size, shape, and location of the structures but were constrained by the conditions of the lot. The shed is also unable to be moved due its age and condition.
- 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 the variance were Dr. Kevin Carson, Mr. Jeffrey Chorman, Mr. Travis Hastings, 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



John Williamson
Chair

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

Date April 12, 2021