

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: MARC FORMAN

(Case No. 12538)

A hearing was held after due notice on April 12, 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 for variances from the side yard setback requirements for a proposed structure.

Findings of Fact

The Board found that the Applicant is requesting a variance of 2.3 feet from the ten (10) feet side yard setback requirement on the north side for a proposed addition and a variance of 4.3 feet from the ten (10) feet side yard setback requirement on the north side for a proposed addition. This property is located on the east side of Reynolds Road approximately 807 feet northwest of Zion Church Road (911 Address: 12921 Reynolds Road, Milton) said property being identified as Sussex County Tax Map Parcel Number 2-35-8.00-18.00. After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a survey dated October 6, 2020, photographs, a letter of support, 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 one letter in support of and no letters in opposition to the Application.
3. The Board found that Marc Forman was sworn in to testify about the Application.
4. The Board found that Mr. Forman testified that he is requesting a variance on the northeast side of his property to build a two-car garage with a bathroom and bedroom to the rear.
5. The Board found that Mr. Forman testified that the septic system is located in the rear yard.
6. The Board found that Mr. Forman testified that there are detached garages in the neighborhood.
7. The Board found that Mr. Forman testified that the Property has a unique parallelogram shape and the dwelling is placed square to the front and back boundaries and that this unique shape created an angled setback that is wider at the back of the house and narrow towards the front.
8. The Board found that Mr. Forman testified that the existing septic field and mature tree limits the ability to enable the reasonable use of the Property and cannot be otherwise developed for a two-car garage and addition.
9. The Board found that Mr. Forman testified that the exceptional practical difficulty was not created by the Applicant but by the uniqueness of the Property, the placement of the septic field, and the location of the mature trees.
10. The Board found that Mr. Forman testified that granting the variances will not alter the essential character of the neighborhood and that the neighborhood is a quiet, single-family residential neighborhood.
11. The Board found that Mr. Forman testified that the design will complement the existing architecture and location of garages and additions that exist on other properties in the area.
12. The Board found that Mr. Forman testified that the adjacent neighbor has submitted a letter of support.

13. The Board found that Mr. Forman testified that the variances requested are the minimum variances that will afford relief to safely place a standard width two car garage.
14. The Board found that Mr. Forman testified that the house currently has two bedrooms and one bathroom.
15. The Board found that Mr. Forman testified that the septic system has been updated and is approved for three bedrooms and two bathrooms.
16. The Board found that Mr. Forman testified that the HVAC system could possibly be placed in the rear yard but plans have not yet been prepared for the garage and addition. He noted that an outside HVAC system is needed. He thinks he can put the HVAC in compliance with the setback requirements and that he is willing to reach out to a surveyor.
17. The Board found that Mr. Forman testified that he is working with an engineer.
18. The Board found that Mr. Forman testified that he bought the Property in 2019.
19. The Board found that Mr. Forman testified that the addition will be 45 feet long and 24 feet wide and that the garage will measure 24 feet by 24 feet.
20. The Board found that Mr. Forman testified that the rest of the addition will consist of the bedroom, bathroom, and laundry room area.
21. The Board found that Mr. Forman testified that he may enclose part of the deck.
22. The Board found that Mr. Forman testified that no steps are required for the addition as it will be at ground level.
23. The Board found that Mr. Forman testified that the septic system is located to the south of the deck and the septic system goes straight back to the shed. He noted that the septic system takes up most of the building envelope.
24. The Board found that no one appeared in support of or in opposition to the Application.
25. The Board voted to leave the record open for the limited purpose of allowing the Applicant to submit a proposed site plan within 60 days and to place the Application on a future agenda after receipt of the site plan.
26. The Applicant thereafter submitted an updated site plan dated May 4, 2021, and, on June 21, 2021, the Board discussed and voted on the Application.
27. 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 size, shape, and development. The Applicant recently purchased the Property, which is improved with a dwelling, and the Applicant seeks to construct a reasonable addition thereto. The lot is shaped like a parallelogram and is only 100 feet wide. The Applicant is limited in his ability to develop the Property because the septic system is located to the rear of the dwelling within the building envelope. Moreover the addition will be, in part, used for a garage and the driveway is located to the north side of the lot thereby necessitating that the garage be located in that approximate area. These unique characteristics of this Property have created a limited building envelope and have created an unnecessary hardship and exceptional practical difficulty for the Applicant who seeks to place a reasonable addition on the site.
 - 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 Applicant seeks to place an addition to the home

on the lot but is 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 addition to be placed the lot. The Board is convinced that the shape and location of the addition are also reasonable, which is confirmed when reviewing the survey provided by the Applicant. The Board notes that the addition will be used for a garage and additional living space.

- d. The unnecessary hardship and exceptional practical difficulty were not created by the Applicant. As previously stated, the Property has unique conditions and these conditions have resulted in a limited building envelope on the Property. These conditions have created the unnecessary hardship and exceptional practical difficulty. Furthermore, the Applicant is constrained by the location of the existing building, mature trees, driveway, and septic system.
- 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 addition will have no effect on the character of the neighborhood. The addition will be located near the dwelling and driveway and there was no substantial evidence that the addition would somehow alter the essential character of the neighborhood. The Board notes that no letters in opposition or testimony in opposition were presented to the Board.
- f. The variances sought are the minimum variances necessary to afford relief and the variances requested represent the least modifications possible of the regulation at issue. The Applicant has demonstrated that the variances sought will allow the Applicant to place the reasonably sized addition on the Property. The Board is convinced that the Applicant explored other options for the size, shape, and location of the addition but was constrained by the conditions of the lot.
- 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 with conditions were Mr. Jeffrey Chorman, Mr. Travis Hastings, and Mr. John Williamson. Dr. Kevin Carson voted against the Motion to approve the variance application. Mr. Brent Workman and Mr. Jordan Warfel did not participate in the discussion or vote on this 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 September 13, 2021.