

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

**IN RE: RODNEY KENNEDY**

**(Case No. 12551)**

A hearing was held after due notice on May 3, 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 a variance from the side yard setback requirement for an addition to an existing structure.

Findings of Fact

The Board found that the Applicant is requesting a variance of 5 feet from the fifteen (15) feet side yard setback requirement on the west side for an addition to an existing structure. This property is located on the north side of Sycamore Road approximately 431 feet southwest of Dukes Lumber Road (911 Address: 14181 Sycamore Road, Laurel) said property being identified as Sussex County Tax Map Parcel Number 2-32-8.00-2.00. 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 January 23, 2014, drawings, 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 Robert Kennedy was sworn in to testify about the Application.
4. The Board found that Mr. Kennedy testified that there is an existing 24 foot by 24 foot garage located on the Property and that the garage complies with the setback requirements because it is less than 600 square feet and is more than 5 feet from the property line.
5. The Board found that Mr. Kennedy testified that he proposes to add a 12 foot by 24 foot lean-to the side of the garage for a workshop but the addition will make the garage larger than 600 square feet and a variance is needed even though the addition will not make the garage closer to the side property line.
6. The Board found that Mr. Kennedy testified that the Property is a pie-shaped property.
7. The Board found that Mr. Kennedy testified that the existing garage could not be moved over because of the location of three mature trees.
8. The Board found that Mr. Kennedy testified that the lean-to cannot be built anywhere else on the Property because of the uniqueness of the lot and the lean-to has to be connected to the garage.
9. The Board found that Mr. Kennedy testified that the exceptional practical difficulty was not created by the Applicant but by the narrowness of the lot and the location of the mature trees.
10. The Board found that Mr. Kennedy testified that the addition will not alter the essential character of the neighborhood as it will be in keeping with the neighborhood.
11. The Board found that Mr. Kennedy testified that the lean-to addition will have the same siding as the existing garage.
12. The Board found that Mr. Kennedy testified that the septic is on the east side of the Property.
13. The Board found that Mr. Kennedy testified that the lean-to could not be placed in the rear of the garage as there are trees in that area.

14. The Board found that Mr. Kennedy testified that, because of the shape of the Property, the variance is only necessary for the rear corner of the garage as the front corner will comply with the 15 feet side yard setback.
15. The Board found that Mr. Kennedy testified that there have been no complaints from neighbors.
16. The Board found that four people appeared in support of and no one appeared in opposition to the Application.
17. 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 lot is a triangularly shaped and is improved by a house, garage, and septic system. The septic system takes up a portion of the building envelope and the rear portion of the lot is largely unbuildable due to the shape of the lot. Consequently, the lot has an unusual and limited building envelope. The Applicant seeks to make a reasonable addition to the existing garage and the addition will be in the building envelope but the addition will increase the size of the garage such that larger setback requirements apply on the opposite side of the garage. The front corner of the garage will comply with the larger setback requirement but the rear corner of the garage will not. The Property is also improved by existing trees which limit its developable area. The unique conditions of the lot have created an unnecessary hardship and exceptional practical difficulty for the Applicant who seeks to construct a reasonable addition to the garage.
  - 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 construct an addition to the garage on the lot but is unable to do so without violating the Sussex County Zoning Code. The Board is convinced that the variance is necessary to enable the reasonable use of the Property as the variance will allow this reasonably sized addition to be constructed as proposed. The Board is convinced that the shape and location of the structure is also reasonable, which is confirmed when reviewing the survey provided by the Applicant. The lean-to will afford the Applicant with additional space for a workshop.
  - 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.
  - e. The variance 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 made entirely within the building envelope and the location of the garage as it pertains to the side property line will not change. Only a small portion of the garage will encroach into the setback area and there have been no complaints about the location of the garage despite the fact that it has been on the site for some time. No

evidence was presented which demonstrates that the variance would somehow alter the essential character of the neighborhood.

- f. The variance sought is the minimum variance necessary to afford relief and the variance requested represents the least modification possible of the regulation at issue. The Applicant has demonstrated that the variance sought will allow the Applicant to construct a reasonably sized addition to the garage on the Property. The addition will be constructed in the building envelope and no additions will be made within the setback areas.
- 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 July 12, 2021