

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: COASTAL PROPERTIES, LLC

(Case No. 12553)

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 rear yard setback requirements for a proposed structure.

Findings of Fact

The Board found that the Applicant is requesting a variance of 13 feet from the twenty (20) feet rear yard setback requirement for a proposed structure. This application pertains to certain real property located at the intersection of Stingey Lane and Beaver Dam Road approximately 589 feet southeast of Lewes-Georgetown Highway (Route 9) (911 Address: 17677 Stingey Lane, Lewes); said property being identified as Sussex County Tax Map Parcel Number 3-34-5.00-196.00. 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, property record information, a survey of the Property dated February 8, 2021, 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 Kristopher Grozier was sworn in to testify about the Application.
4. The Board found that Mr. Grozier testified that the Property is unique as it is a small lot with a non-conforming house.
5. The Board found that Mr. Grozier testified that the house was dilapidated and he has improved it since he bought the Property.
6. The Board found that Mr. Grozier testified that the driveway for the Property is being used as a public thoroughfare between Beaver Dam Road and the Lewes-Georgetown Highway.
7. The Board found that Mr. Grozier testified that, when he purchased the Property, he intended to improve the Property with a 3-car garage which he needed for storage space.
8. The Board found that Mr. Grozier testified that there is a cesspool that was not properly filled in and the ground is not stable enough to move the garage farther onto the lot. He thinks the cesspool measures 8 feet by 8 feet or 10 feet by 10 feet.
9. The Board found that Mr. Grozier testified that the Applicant did not own this property when the cesspool was there and did not fill it in and learned about this situation after the purchase.
10. The Board found that Mr. Grozier testified that there is heavy traffic on Stingey Lane as vehicles use this lane for access to Delaware Electric Cooperative and Stockley Materials.
11. The Board found that Mr. Grozier testified that improvements have been made to the house which was in a state of disrepair.
12. The Board found that Mr. Grozier testified that the improvement to the house and the new garage will improve the neighborhood.
13. The Board found that Mr. Grozier testified that this would be a minimum variance to safely place the garage on the Property to serve both structural integrity and not interfere with the public traffic using Stingey Lane.

14. The Board found that Mr. Grozier testified that the building is under construction with a stop work order from the County.
15. The Board found that Mr. Grozier testified that a permit was not obtained as it was begun during the Covid-19 pandemic and the Applicant wanted to keep his employees working.
16. The Board found that Mr. Grozier testified that he did not know about the setback requirements.
17. The Board found that Mr. Grozier testified that he works in construction and the building will be used to store building construction materials.
18. The Board found that Mr. Grozier testified that the Property is served by public water and sewer.
19. The Board found that Mr. Grozier testified that the house is vacant.
20. The Board found that Mr. Grozier testified that the framing has been completed on the garage but the roof has not been attached.
21. The Board found that Mr. Grozier testified that he did not look at a smaller building.
22. The Board found that Mr. Grozier testified that the garage will be used for both personal items and for his business.
23. The Board found that Matthew Walls, Colleen Grozier, Jeff Warren, Lauren Elizabeth Griffin-Walls, Vincent Manulli, and John Buhay were sworn in by teleconference to testify in support of the Application.
24. The Board found that Mr. Walls testified that the Property has been greatly improved and that granting the variance will add value to the area.
25. The Board found that Ms. Grozier testified that they own Coastal Custom Painting in Lewes and are repaving the Property where the painting business is located.
26. The Board found that Ms. Grozier testified that a lot of the trucks have been temporarily parked at the subject property.
27. The Board found that Ms. Grozier testified that this property was severely dilapidated when they purchased it and they have made improvements not only to the subject property but also to Stingey Lane.
28. The Board found that Ms. Grozier testified that this area is no longer residential as the Property is close to Stockley Materials and other commercial ventures.
29. The Board found that Mr. Warren testified that he has lived in this area for a while and that the property was in very bad shape but the Applicant has improved the Property. He believes that the Applicant cares about his property and it will look good when completed.
30. The Board found that Ms. Griffin-Walls testified that she has lived in the Lewes area for most of her life and that she passes this property daily. She believes that the Property was in need of repair and the Applicant has improved the Property. She has no concerns about this project being completed.
31. The Board found that Mr. Manulli testified that he has lived across the street from the subject property for approximately 13 years and that the Applicant has improved the Property.
32. The Board found that Mr. Manulli testified that there is a lot of commercial traffic to and from Stockley Materials.
33. The Board found that Mr. Buhay testified that he works in Lewes and drives past this property multiple times a month. He believes that the Applicant has done an exceptional job to improve the community and that he should be able to complete this project.
34. The Board found that Patricia Harmon Edwards and Ernestine Brittingham were sworn in by teleconference to testify in opposition to the Application.
35. The Board found that Ms. Edwards testified that her property backs up to this lot.
36. The Board found that Ms. Edwards testified that the structure is there except for the roof.

37. The Board found that Ms. Edwards testified that the Applicant did work on the garage after the stop work order was issued.
38. The Board found that Ms. Edwards testified that the Applicant's trucks are parked there and block her driveway.
39. The Board found that Ms. Edwards testified that the building is huge and blocks her view.
40. The Board found that Ms. Edwards testified that granting this variance would alter the essential character of the neighborhood as it is a residential area and the garage which has been built is too large for the area.
41. The Board found that Ms. Edwards testified that the Applicant has stated the building would be used for a commercial purpose but the Property is not zoned for commercial uses.
42. The Board found that Ms. Brittingham testified that granting this variance will alter the character of the neighborhood and that she opposes commercial activity on this site because this is a residential area.
43. The Board found that Mr. Grozier testified that the Property was dilapidated when he purchased it and he has cleaned it up.
44. The Board found that Mr. Grozier testified that the entrance comes onto Stingey Lane.
45. The Board found that Mr. Grozier testified that he plans to seek a conditional use or a change of zone; that he admits to parking vehicles on the site for his business.
46. The Board found that Mr. Grozier testified that Stingey Lane is used publicly.
47. The Board found that Mr. Grozier testified that the garage will measure 20 feet tall.
48. The Board found that Mr. Grozier testified that he should have obtained a building permit but 2020 was stressful due to Covid-19.
49. The Board found that six people appeared in support of and three people appeared in opposition to the Application.
50. 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 nearly rectangular lot measuring 10,810 square feet with an existing dwelling that is located almost entirely outside the building envelope. The Applicant believes that there is a cesspool on the site which limits where he can locate structures but the cesspool only measures 100 square feet or less according the Applicant's testimony. The lot is not encumbered by a well or septic which would limit other developable areas of the lot. The Applicant did not present evidence of unique topography or other conditions which would effectively limit its 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 the garage within the setback areas. The Board notes that the garage is quite large as well. If the garage was constructed as proposed, most of the buildable area of the lot would be vacant and the garage and dwelling would largely be located outside the building envelope. Effectively the dwelling and attached garage occupy most of the width of the building envelope already. 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, most of the building envelope on this lot is unused. As previously noted the Applicant

argued that a cesspool limits the location of the garage but the cesspool is only 100 square feet in size. The Applicant seeks to finish construction of an unpermitted garage which does not fit within the building envelope and will encroach into the rear yard setback area. The Applicant argues that the garage is needed for storage but the house is admittedly vacant and the site appears to be illegally used, at least in part, for the Applicant's business. The Applicant admitted that commercial vehicles are stored on the site and that he uses the site for storage of construction materials for his business. The Property, however, is not subject to a conditional use or change of zone which will permit those uses. Effectively, the Applicant is seeking this garage, which encroaches into the setback area, for a use which is not permitted on the site. The Board finds that 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 likely construct a garage on the site without a variance. This assumes that the garage is even permitted for the Applicant's intended use. 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 wants it to be located or be the size the Applicant wishes 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 also not entitled to have a garage of this size and in this location. 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 its own exceptional practical difficulty by proposing to construct a garage which does not fit within the building envelope. The Applicant's decision to construct this garage 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. The Board was not convinced that there was some unusual condition to the Property which has created this difficulty. The building envelope appears to otherwise be able to fit a garage, albeit possibly 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 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 its own exceptional practical difficulty. Moreover, the Applicant, which is in the construction business, undertook this construction without obtaining a proper building permit which would have alerted the Applicant to the various setback issues. The Board was not convinced that the Applicant could not obtain a permit due to Covid-19.
- d. The Board finds that the Applicant failed to demonstrate that the variance would not alter the essential character of the neighborhood. The Applicant has constructed the garage near its neighbor's property line and the Applicant has used the Property for purposes which are not permitted. The neighbors noted the commercial use of the Property by the Applicant and the Applicant admitted to such use and that it intends to use the garage for

commercial storage. These uses run contrary to the Property's zoning district. The Board has concerns that, if the garage is constructed, the Applicant will use this site in a commercial nature and the neighbors have already testified to access issues due to the parking of vehicles on Stingey Lane by the Applicant or its employees. The Board finds that the garage would likely exacerbate those problems and would alter the character of the neighborhood and be detrimental to the public welfare.

- 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 construct a garage on the Property in compliance with the Sussex County Zoning Code. The Board also notes that the Applicant testified that he did not consider a smaller structure.

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, Mr. Travis Hastings, 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
Chair

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

Date July 12, 2021.