

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: MARY ANN BREWER

(Case No. 12568)

A hearing was held after due notice on June 7, 2021. The Board members present were: Mr. Jeff Chorman, Mr. John T. Hastings, Mr. Jordan Warfel, and Mr. John Williamson.

Nature of the Proceedings

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

Findings of Fact

The Board found that the Applicant is requesting a variance of 3.5 feet from the ten (10) feet side yard setback requirement on the north side and a variance of 4 feet from the ten (10) feet side yard setback requirement on the north side for a proposed attached garage and breezeway. This property is located on the southeast side of Bayview East within Bayview Estates Subdivision (911 Address: 38825 Bayview East, Selbyville) said property being identified as Sussex County Tax Map Parcel Number 5-33-19.00-132.00. After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, drawings, a survey of the Property dated October 27, 1994, a photograph, 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 Mary Ann Brewer was sworn in to testify about the Application.
4. The Board found that Ms. Brewer testified that the Property is unique because the house is set back on the lot and is a waterfront property which is wider in the front than in the rear.
5. The Board found that Ms. Brewer testified that the garage will accommodate a recreational vehicle.
6. The Board found that Ms. Brewer testified that the variance is required to allow the owner to build a 24 feet by 25 feet garage without blocking more than half of the house frontage.
7. The Board found that Ms. Brewer testified that the Applicant did not determine the placement of the house as it was existing when purchased in 2006 and, therefore, the Applicant did not create the difficulty.
8. The Board found that Ms. Brewer testified that the proposed garage with the variances will be similar in size and character to the properties in the neighborhood.
9. The Board found that Ms. Brewer testified that the variances are the minimum variances necessary to afford relief as the house is 11.6 feet from the side yard property line.
10. The Board found that Ms. Brewer testified that the homeowners association has approved the request and the adjacent neighbor has no objection to the request.
11. The Board found that Ms. Brewer testified that the Property is served by public sewer and that there is a well which is located behind the dwelling.
12. The Board found that Ms. Brewer testified that the access to the garage would be from the driveway.
13. The Board found that Ms. Brewer testified that to access the garage from another location would require approval from DeIDOT and be a farther distance from the house for the Applicant to walk.

14. The Board found that Ms. Brewer testified that the garage cannot be any smaller as it would not accommodate the RV.
15. The Board found that Ms. Brewer testified that the roof to the garage will be attached to the house.
16. The Board found that Ms. Brewer testified that it will be a two-car garage and will also be used to store a car.
17. The Board found that Ms. Brewer testified that the garage cannot be closer to the driveway as it will impede the kitchen window and the front door.
18. The Board found that Ms. Brewer testified that the dwelling consists of approximately 1,200 square feet.
19. The Board found that Ms. Brewer testified that she looked at turning the garage but still needs room to turn the RV around.
20. The Board found that Ms. Brewer testified that she believes she has designed the garage so that it will not look like a garage.
21. The Board found that no one appeared in support of or in opposition to the Application.
22. 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 measures consists of 10,315 square feet and is shaped like a rectangle. The Applicant proposes to construct a two-car garage in the front yard and has designed the garage so that it will encroach into the side yard setback area. The Applicant did not present evidence of unique topography or other conditions which would effectively limit her ability to develop the Property with a garage and which created an exceptional practical difficulty. Rather, the difficulty is clearly the result of the Applicant's intention to construct a garage within the setback area. 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 was already developed in strict conformity with the Code. The existing dwelling complies with the Code. The Applicant, however, seeks to construct a garage which will exceed the setback requirements of the Code. The garage, as proposed, will not fit within the building envelope and will encroach into the side yard setback area. The Applicant argues that the garage needs to be in this location so that she can park her recreational vehicle but there appears to be room to fit a garage on the lot without violating the setback requirements. Rather, the proposed placement of the garage appeared to be due to the Applicant's desire not to block more than half of the front of her house. The Applicant failed to demonstrate that there was no other way to reasonably develop the lot without a variance or that the variances were necessary to reasonably use the Property. 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 it to be 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. For these reasons, the Board finds that the Property could be developed in strict conformity with

the Code and that the variances are 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 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. There is no unusual condition to the Property which has created this difficulty. 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 construct 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 her own exceptional practical difficulty.
- d. Since the variance is not necessary to enable the reasonable use of the Property, the Board also finds that the variances requested are not the minimum variances necessary to afford relief.

The Applicant failed to convince 3 Board Members that she met the standards for granting a variance. As such, the Board denied the variance application finding that it failed to meet the standards for granting a variance.

Decision of the Board

Upon a motion to approve the variance application, which was duly made and seconded, the variance application was denied. The Board Members in favor of the Motion to approve the variances were Mr. Jeffrey Chorman and Mr. Jordan Warfel. Mr. Travis Hastings and Mr. John Williamson voted against the Motion to approve the variance application. Dr. Kevin Carson did not participate in the discussion or vote on this application. Pursuant to Board of Adjustment Rule of Procedure 6.5, three affirmative votes are needed to approve a variance. Since the Applicant failed to convince three Board members that the variances should be approved, the motion to approve the application failed and the variance application was denied. The reasons outlined above explain the reasons for the denial.

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 August 16, 2021