

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

**IN RE: LISA WENERD & DAVID A. WENERD, SR.**

**(Case No. 12569)**

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 rear yard setback requirements for a proposed structure.

Findings of Fact

The Board found that the Applicants are requesting a variance of 10 feet from the twenty (20) feet rear yard setback requirement for a proposed detached accessory structure. This application pertains to certain real property located on the north side of Woodland Court South within the Angola by the Bay Subdivision (911 Address: 33173 Woodland Court South, Lewes); said property being identified as Sussex County Tax Map Parcel Number 2-34-12.17-103.00. 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, a drawing of the Property, a survey of the Property, drawings of the proposed structure, information on the community setback standards, 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 David Wenerd and Lisa Wenerd were sworn in to testify about the Application.
4. The Board found that Mr. Wenerd testified that that he needs space between the proposed garage and the existing dwelling to be able to use the Property to its fullest.
5. The Board found that Mr. Wenerd testified that, if the garage is not set back to 10 feet, the garage will be too close to the dwelling and will not line up with the driveway area and plans for a future porch. He noted that the Applicants plan to construct a porch to the side of the dwelling and that the construction of the garage is part of their development plans.
6. The Board found that Mr. Wenerd testified that there is no other area on the Property to place the proposed garage.
7. The Board found that Mr. Wenerd testified that the proposed garage will not alter the character of the property or the neighborhood but will enhance the look and increase the property value. He noted that the homeowners association approves the request and neighbors have not objected to it either.
8. The Board found that Mr. Wenerd testified that the proposed size of the garage will be used for storage of cars and a workbench.
9. The Board found that Mr. Wenerd testified that the variance will accommodate the Applicants' needs and put the garage far enough from the street.
10. The Board found that Mr. Wenerd testified that the Applicants have owned the lot for 5 years.
11. The Board found that Mr. Wenerd testified that the proposed garage will be 19 feet tall at the peak of the roof with an attic for additional storage.
12. The Board found that Mr. Wenerd testified that the proposed garage will have a lean-to that will measure 8 feet wide. He believes a variance would be needed even if the lean-to was not built.

13. The Board found that Mr. Wenerd testified that the Property is served by County water and sewer.
14. The Board found that Mr. Wenerd testified that the house consists of 2,200 square foot and the proposed porch will measure 20 feet x 12 feet.
15. The Board found that Mr. Wenerd testified that the Property consists of 10,000 square feet.
16. The Board found that Mr. Wenerd testified that the garage will measure 728 square feet.
17. The Board found that Mr. Wenerd testified that the Applicants do not want to remove some of the landscaping on the side of the property.
18. The Board found that Mr. Wenerd testified that the rear of the Property is adjacent to a common area.
19. The Board found that Mr. Wenerd testified that the garage could be moved forward but it would encroach on the area where the porch is proposed.
20. The Board found that Ms. Wenerd testified that she and her husband are working with a blank slate and trying to make the Property unique.
21. The Board found that Ms. Wenerd testified that they wanted a detached garage.
22. The Board found that Ms. Wenerd testified that there is landscaping on the side that they wish to keep.
23. The Board found that Ms. Wenerd testified that there is a similar property in the area that they are taking some ideas from.
24. The Board found that Ms. Wenerd testified that they are downsizing and trying to accommodate their needs.
25. The Board found that Ms. Wenerd testified that neighbors support the request.
26. The Board found that no one appeared in support of or in opposition to 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 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 square lot measuring 10,000 square feet with an existing dwelling, porch, and shed; all of which are located in the building envelope. The lot is not encumbered by a well or septic which would limit other developable areas of the lot. The Applicants 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 Applicants' intention to construct the garage within the setback areas. The Board notes that a significant portion of the garage would encroach into the rear yard setback area. The Property is also a double lot and much of the west side of the Property is undeveloped. Rather than locate the garage in the building envelope, the Applicants propose to place part of the garage in the setback areas. As such, the Applicants have failed to demonstrate that there was some unique condition which has created the exceptional practical difficulty.
  - b. The Applicants failed to prove that the Property could not be developed in strict conformity with the Sussex County Zoning Code. Rather, most of the north side of the building envelope on this lot is unused. As previously noted, the lot is a square lot that has no distinct unique characteristic. The lot is also already developed with a house, porch, and shed. The Applicants argued that the garage had to be located in this area but the Applicants failed to convince the Board that the garage could not be located elsewhere

on the lot. Moreover, the Applicants intend to construct a porch to the side of the house and the Applicants believe that a garage that complies with the Code would limit their ability to build the porch. It is clear to the Board that the Applicants have chosen to develop portions of the building envelope with other structures and want to place the garage outside the building envelope in order to develop those other areas. The Board finds that the Applicants 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 in a location other than where the Applicants propose, the Applicants can likely construct a garage on the site without a variance. The Board was simply not convinced that the Applicants could not otherwise develop the Property in compliance with the Code. Rather, the Property is already developed in compliance with the Code. Perhaps the garage would not be in the exact location where the Applicants want it to be located or be the size the Applicants wish it to be but the Property appears to have a large enough building envelope for the Applicants to develop the Property in compliance with the Sussex County Zoning Code. The Applicants are 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 Applicants are creating their own exceptional practical difficulty by proposing to construct a garage which does not fit within the building envelope. The Applicants' 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 in a location other than the location preferred by the Applicants, 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 Applicants seek to build the garage as proposed for purposes of convenience, profit, and / or caprice. Since the Applicants can develop the Property in compliance with the Sussex County Zoning Code, the need for the variance is something created by the Applicants' wants rather than an unusual physical condition relating to the Property. The Applicants have thus created their own exceptional practical difficulty. Moreover, the Applicants are also developing part of the building envelope with a porch and the location of the porch is one of the reasons why they propose to place the garage in this location. It is, thus, clear to the Board that the Applicants are creating the difficulty.
- d. The Board finds that the Applicants failed to demonstrate that the variance would not alter the essential character of the neighborhood. The Applicants propose to construct the garage near the rear property line. Since the Property is a square lot with no discernible unique characteristic, the Board has concerns that the approval of this request will embolden neighbors to seek similar relief and threaten the integrity of the setback requirements in the community.
- 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. Moreover, the Applicant testified that the garage could be moved forward but they chose not to do so because it would limit their ability to construct a porch. This evidence clearly demonstrates that the Applicants made the decision to develop the Property outside the building envelope.

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 Mr. Jeffrey Chorman, Mr. Travis Hastings, Mr. John Williamson. Mr. Jordan Warfel voted against the Motion to deny the variance application. Dr. Kevin Carson 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 August 16, 2021