

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: LOGAN GALBREATH

(Case No. 12576)

A public hearing was held after due notice on June 21, 2021. The Board members present were: Dr. Kevin Carson, Mr. Jeff Chorman, Mr. John T. Hastings, Mr. Jordan Warfel, and Mr. John Williamson.

Nature of the Proceedings

This is an application for a variance from the front yard setback requirement for a proposed structure.

Findings of Fact

The Board found that the Applicant is requesting a variance of 20 feet from the thirty (30) feet front yard setback requirement for a proposed detached pole building. This application pertains to certain real located on the northeast side of Smith Drive within the Banksville Park Subdivision (911 Address: 35438 Smith Drive, Ocean View); said property being identified as Sussex County Tax Map Parcel Number 1-34-12.00-1260.00. 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 survey of the Property dated June 2, 2020, an undated site plan, 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 the Application.
3. The Board found that Logan Galbreath was sworn in to give testimony about the Application. Ms. Galbreath submitted additional exhibits to the Board as well.
4. The Board found that Ms. Galbreath testified that she is applying for a front yard variance to place a pole-barn style garage on her property.
5. The Board found that Ms. Galbreath testified that she purchased the Property approximately one year ago and the dwelling was existing in its current location at that time.
6. The Board found that Ms. Galbreath testified that the garage will be built to match the peak of the existing house.
7. The Board found that Ms. Galbreath testified that, due to the shape and placement of the house, it is impossible to add on to the garage to meet the current setbacks. Furthermore, she testified that the garage cannot be placed in the rear yard as there is a propane tank and a well in the rear of the property. She noted that the propane tank is located to the right of the house and in front of the existing shed.
8. The Board found that Ms. Galbreath testified that the shed will be removed.
9. The Board found that Ms. Galbreath testified that a smaller garage would not work as the Applicants have a bus, three cars, and a motorcycle. She believes that the pole building will help keep the yard clean.
10. The Board found that Ms. Galbreath testified that neighbors support the request and that no homeowner association approval is required. She noted that the development is a small community.
11. The Board found that Ms. Galbreath testified that she operates a boutique on wheels.
12. The Board found that Ms. Galbreath testified that granting the variance will not create any visibility issues and that there is not much traffic along Smith Drive.
13. The Board found that Ms. Galbreath testified that she looked at turning the garage.

14. The Board found that Ms. Galbreath testified that there is approximately 10 feet between the property line and the edge of paving of Smith Drive and that the garage will be 20 feet from the road.
15. The Board found that Marie McGraw was sworn in to give testimony in support of the Application.
16. The Board found that Ms. McGraw testified that she lives directly across the street from the subject property.
17. The Board found that Ms. McGraw testified that granting the variance will not create visibility issues on Smith Drive and that there are only 9 houses on Smith Drive.
18. The Board found that Ms. McGraw testified that granting the variance will not deter from the character of the neighborhood.
19. The Board found that two people appeared in support of and no one appeared in opposition to the Application.
20. 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 met the standards for granting a variance. The findings below further support the Board's decision to approve the Application.
 - a. The Property is unique in its development. The lot is developed by a house that was placed on the lot by a prior owner. Additionally, the house is served by a well and propane tank. These systems are located within the building envelope and greatly limit the area where a garage can be located. These conditions are unique and have created a limited building envelope for the Applicant. The Board finds that the unique conditions of the lot have created an exceptional practical difficulty and unnecessary hardship for the Applicant who seeks to construct a garage on the lot.
 - 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 conditions and the buildable area thereof is limited due to these conditions. The Applicant seeks to construct a garage but is unable to do so without violating the Sussex County Zoning Code. The Board is convinced that front yard variance is necessary to enable the reasonable use of the Property as the variance will allow the Applicant to construct a garage. It is clear that there is no other place where the garage can be located and the garage is needed to store the Applicant's vehicles.
 - d. The exceptional practical difficulty and unnecessary hardship were not created by the Applicant. The Applicant did not create the unusual conditions of the Property. The lot was developed by a prior owner and the Applicant did not acquire the Property until after the house was built. Furthermore, the well and propane tank predated the Applicant's purchase of the lot. The preexisting conditions have resulted in a limited building envelope on the Property and the small building envelope has created the exceptional practical difficulty and unnecessary hardship. The unique characteristics of the Property are clear when reviewing the survey and the Applicant's testimony. The development of the Property by a prior owner also has limited where the garage could be placed; particularly in light of the location of the well, propane tank, and driveway. The Board is convinced that the exceptional practical difficulty and unnecessary hardship were not created by the Applicant but were created by the lot's unique characteristics and the development thereof by a prior owner.
 - 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 variance will have no effect on the character of the neighborhood. The variance will allow the Applicant to construct the garage on the lot. There was no evidence that the variance would somehow alter the essential character of the neighborhood or be detrimental to the public welfare. Moreover, neighbors have expressed support of the Application. The Board also notes that Smith Drive appears to be a lightly traveled road so the garage should not pose visibility concerns for travelers of Smith Drive. Additionally, there is a gap between the edge of paving of Smith Drive and the front of the Property appears largely than it actually is.

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 garage to house her vehicles. The Applicant explored other options but was limited by the design and development of the lot by a prior owner.

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 were Mr. Jeffrey Chorman, Mr. Jordan Warfel, and Mr. John Williamson. Dr. Kevin Carson and Mr. Travis Hastings voted against the motion to approve 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