

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: RICHARD ORSINI & JOANNE ORSINI

(Case No. 12579)

A hearing was held after due notice on July 12, 2021. The Board members present were: Dr. Kevin Carson, 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 and side yard setback requirements for a proposed structure.

Findings of Fact

The Board found that the Applicants are requesting a variance of 2 feet from the five (5) feet side yard setback requirement on the southeast side and a variance of 2 feet from the five (5) feet rear yard setback requirement for a proposed garage. This application pertains to certain real property located on the northeast side of Oak Street within the Banks Acres Subdivision (911 Address: 31435 Oak Street, Ocean View) said property being identified as Sussex County Tax Map Parcel Number 1-34-12.00-111.00. After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a portion of the tax map of the area, an aerial photograph of the Property, a survey of the Property dated February 25, 2019, a drawing of the proposed addition, a petition supporting the request, and pictures.
2. The Board found that the Office of Planning & Zoning received a five-signature petition in support of the Application and no correspondence in opposition to the Application.
3. The Board found that Richard Orsini and Joanne Orsini were sworn in to testify about the Application.
4. The Board found that Mr. Orsini testified that the lot is a non-conforming lot consisting of 10,000 square feet and it was previously developed with a manufactured home that has been replaced with a modular home.
5. The Board found that Mr. Orsini testified that the plan was always to place a garage on the Property but, if the garage was built to the setback restriction line, the Applicants would not be able to access the rear yard.
6. The Board found that Mr. Orsini testified that the existing shed was on the Property before the Applicants purchased the Property in 1990.
7. The Board found that Mr. Orsini testified that the Applicants want to use the same footprint on the rear and the side for the shed to place the new garage.
8. The Board found that Mr. Orsini testified that there are sheds on neighborhood properties with similar setbacks and that most sheds in the neighborhood are 3 feet off the property line.
9. The Board found that Mr. Orsini testified that the neighbors support the request.
10. The Board found that Mr. Orsini testified that the Applicants wish to utilize the existing driveway to access the garage and the driveway will also allow for the propane company to access the tank.
11. The Board found that Mr. Orsini testified that there is a well and an in-ground propane tank in the rear of the Property which prevent the garage from being built at the other side of the lot. He believes that the garage cannot be placed elsewhere on the lot.

12. The Board found that Mr. Orsini testified that the garage will measure 24 feet by 24 feet.
13. The Board found that Mr. Orsini testified that 3 feet will give him enough space to maintain the building without encroaching on neighboring property.
14. The Board found that Ms. Orsini testified that the garage will match the house.
15. The Board found that Ms. Orsini testified that there is no homeowners association in the neighborhood.
16. The Board found that Ms. Orsini testified that the Applicants cannot place the garage too close to the house, which is why it was not built to a setback of 5.5 feet as originally proposed.
17. The Board found that no one appeared in support of or in opposition to the Application
18. 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 due to its development, size, and historical use. The Property has been developed by a dwelling, well, propane tank, and driveway. The home is located in the front center of the lot and the propane tank is located in the rear yard but within the building envelope. The driveway to the property is located to the side of the house. The Applicants seek to construct a garage but they are unable to locate it within the building envelope because of the location of the house, driveway, well, and propane tank. These conditions have created a limited building envelope and are unique and have created an unnecessary hardship and exceptional practical difficulty for the Applicants who seek to construct a pole building 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 situation and the Property, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Applicants seek to place a garage on the lot but are unable to do while complying with the Sussex County Zoning Code. The Board is thus convinced that the variances are necessary to enable the reasonable use of the Property as the variances will allow the Applicants to reasonably construct the garage so that it can be safely accessed from the driveway while still affording reasonable access to the rear of the Property and the propane tank. The Board is convinced that the size, shape, and location of the structure are reasonable. The Board notes that it is unlikely that the garage could be located elsewhere on the lot due to the location of the home, driveway, well, and propane tank.
 - d. The unnecessary hardship and exceptional practical difficulty were not created by the Applicants. As discussed above, the Property has unique conditions which have limited the Applicants' ability to reasonably develop the Property. The Applicants did not create the unique conditions of the lot. The Board was convinced that the Applicants have not created the exceptional practical difficulty and unnecessary hardship. Furthermore, the Board is convinced that the Applicants did not come to the Property with an illegal use in mind. Rather, the Applicants are limited by the physical conditions of the Property and need the variances in order to construct the proposed structure.
 - e. The variances 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 variances will have no effect on the character of the neighborhood. The proposed garage will be located at the end of the Applicants' driveway and is located in a similar location to an existing shed that will be removed. There was no evidence that the garage would alter the character of the neighborhood and the Board heard no substantial evidence that the variances would somehow alter the essential character of the neighborhood or be detrimental to the public welfare. Rather, the Board received evidence of support from neighbors.

- f. The variances sought are the minimum variances necessary to afford relief and the variances requested represent the least modifications possible of the regulations at issue. The Applicants have demonstrated that the variances sought will allow the Applicants to construct a reasonably sized garage on the lot. The garage is located such that the Applicant can safely access the garage from the driveway while also providing enough space to access the rear of the Property.
- 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 were Dr. Kevin Carson, Mr. Travis Hastings, Mr. Jordan Warfel, and Mr. John Williamson. No Board Member voted against the Motion to approve the variance application. Mr. Jeffrey Chorman 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 September 20, 2021.