

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: JAMES C. VAN WAGONER

(Case No. 12617)

A hearing was held after due notice on October 18, 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 side yard setback requirement for a proposed structure.

Findings of Fact

The Board found that the Applicant is requesting a variance of 5 feet from the ten (10) feet side yard setback requirement on the north side for a proposed garage. This property is located on the east side of Salty Way East within the Keenwick West Subdivision (911 Address: 37792 Salty Way East, Selbyville) said property being identified as Sussex County Tax Map Parcel Number 533-19.07-41.00 ("the Property"). After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a letter from the Keenwick West Property Owners Association, a drawing of Keenwick West, a letter from the Applicant, letters in support of the Application, photographs, a survey of the Property dated June 14, 1976, a drawing of the Property and improvements thereon, 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 thirty-five (35) letters in support of and no correspondence in opposition to the Application.
3. The Board found that James Van Wagoner was sworn in to testify about the Application.
4. The Board found that Mr. Van Wagoner testified that he is a new homeowner to this neighborhood and that he proposes to build an attached garage primarily for boat storage.
5. The Board found that Mr. Van Wagoner testified that he has support of 35 neighbors, including all immediate neighbors, but one neighbor opposes the request.
6. The Board found that Mr. Van Wagoner testified that the garage will measure 16.5 feet wide and the garage will not be used to park a car. Rather, the garage will be used to store a boat, kayak, crab traps, bicycles, etc. He testified that a garage of this size is needed to meet his storage needs.
7. The Board found that Mr. Van Wagoner testified that he has approval from the homeowners' association.
8. The Board found that Mr. Van Wagoner testified that he intends to back his boat to the garage and that the garage will have no steps.
9. The Board found that Mr. Van Wagoner testified that there is no boat lift or access to the rear yard.
10. The Board found that Mr. Van Wagoner testified that the Property is a wooded lot but approximately 10 trees have been removed and more trees would have to be removed to build a garage in the front of the house.
11. The Board found that Mr. Van Wagoner testified that the existing shed will remain on the Property.
12. The Board found that Dean Pantellere was sworn in to give testimony in opposition to the Application.

13. The Board found that Mr. Pantellere testified that Keenwick West has large properties and is not crowded.
14. The Board found that Mr. Pantellere argued that the Applicant's boat is approximately 8.5 feet wide he believes that the Applicant does not need a 16 feet wide garage to store the boat and equipment. He also argued that the Applicant could meet the setback requirements and that a variance is not necessary.
15. The Board found that Mr. Pantellere testified that there is a storage facility near this development.
16. The Board found that Mr. Pantellere testified that this garage should not have been approved by the homeowners' association.
17. The Board found that no one appeared in support of and one person appeared in opposition to the Application.
18. The Board found that the survey of the Property from June 1976 indicates that the Property may qualify for reduced setbacks under the small lot ordinance. The Applicant's deed refers to the Property as measuring 75 feet wide by 125 feet deep which would qualify the lot for reduced setbacks under the Small Lot Ordinance. If the lot consisted of less than 10,000 square feet, the side yard setback would be reduced to 5 feet and no variance would be needed. The Sussex County online mapping system, however, shows the Property as consisting of 10,123 square feet.
19. The Board found that Mr. Van Wagoner testified that he thought the lot measured 125 feet by 75 feet and that he purchased the lot in 2021. He agreed to obtain an updated survey.
20. The Board voted to leave the record open until the Board of Adjustment meeting on December 20, 2021, for the limited purpose of allowing the Applicant to submit an updated survey or title documents to evidence the dimensions of the lot by December 15, 2021, and to allow public comments specific on these specific documents. Thereafter, the Applicant submitted a survey of the Property dated November 10, 2021, and a copy of the deed transferring the Property to the Applicant. On December 20, 2021, the Board held a second hearing on the Application, at which time Mr. Van Wagoner and Mr. Pantellere were sworn in and testified about the Application.
21. The Board found that Mr. Van Wagoner testified that the Property consists of over 10,000 square feet and, as such, does not benefit from the Small Lot Ordinance.
22. The Board found that Mr. Van Wagoner testified that his surveyor did not explain the discrepancy between the surveys.
23. The Board found that Mr. Van Wagoner testified that the survey indicates an area under construction which is closing in a porch and is not part of this application.
24. The Board found that Mr. Pantellere testified that the lot consists of over 10,000 square feet and that all lots in this development are over 10,000 square feet.
25. The Board found that, at the second hearing, no one appeared in support of and one person appeared in opposition to the Application.
26. The Board found that variances are needed for the existing dwelling and porch but those variances were not part of the original application. Since a hearing was not held on those variances, the Board will not rule on whether the standards have been met for those variances. The Applicant may apply for administrative variances with the Planning & Zoning Department or for variances through a separate application to the Board.
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 for the variances for the garage met the standards for granting a variance for those structures. The findings below further support the Board's decision to approve the Application for the variance.
 - a. The Property is unique due to its size, shape, and development. According to the most recent survey, the Property measures 10,077 square feet, which

is only slightly larger than the lot size requirement necessary to qualify for reduced setbacks under the Small Lot Ordinance. The deed to the Property, however, indicates that the lot consists of 9,375 square feet and, if those dimensions are correct, the lot would qualify for the reduced setbacks under the Small Lot Ordinance – in which case no variance for the proposed garage would be needed. Erring on the side of caution, the Board grants this variance based on the dimensions shown on the newer survey. The Property is a wooded, waterfront lot that has been improved by an existing dwelling since at least 1976. The Applicant only recently acquired the Property and did not place the dwelling on the lot and is constrained by its existing development. The Property measures only 75 feet wide and the location of the existing trees, driveway, and structures, limit where a garage could be reasonably located. The location of the garage is particularly important since the Applicant intends to use it primarily for boat storage where reasonable access to park the boat is needed. These conditions have created a limited and unusually shaped building envelope and these conditions have created an unnecessary hardship and exceptional practical difficulty for the Applicant who seeks to construct an attached garage on the site.

- 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 and situation, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property has unique physical characteristics and the buildable area thereof is limited due to those characteristics. The Applicant seeks to construct the garage on the Property but is unable to do so without violating the Sussex County Zoning Code. The Board is convinced that the variance is necessary to enable the reasonable use of the Property as the variance will allow the Applicant to construct the garage on the lot. The Board is convinced that the shape and location of the garage are also reasonable, which is confirmed when reviewing the survey provided by the Applicant. The Board notes that the garage allows for reasonable storage of the Applicant's boat, kayak, crab pots, bicycle, and other belongings.
- d. The unnecessary hardship and exceptional practical difficulty were not created by the Applicant. As previously stated, the Property has unique conditions and these conditions have resulted in a limited building envelope of the Property. The Applicant also did not place the dwelling, trees, or driveway on the lot. Rather, those structures and trees have been on the Property for many years. These conditions have created the unnecessary hardship and exceptional practical difficulty.
- 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 garage will have no effect on the character of the neighborhood. The homeowners' association has approved the request and many neighbors also support the request. The Board was not convinced by substantial evidence by the opposition that the structures would somehow alter the essential character of the neighborhood.
- 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 the garage on the lot. The garage will fit the Applicant's boat and other belongings.

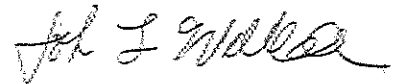
- g. The condition or situation of the Property and the intended use of the Property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the Sussex County Zoning Code.

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 the variance were Dr. Kevin Carson, Mr. Jeffrey Chorman, Mr. Travis Hastings, Mr. Jordan Warfel, and Mr. John Williamson. No Board Member voted against the Motion to approve 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 February 21, 2022