

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: MARK KEYASKO & NANCY KEYASKO

(Case No. 12634)

A hearing was held after due notice on December 13, 2021. The Board members present were: Dr. Kevin Carson, Mr. Jeff Chorman, and Mr. John Williamson.

Nature of the Proceedings

This is an application for variances from the side yard setback requirement for an existing structure.

Findings of Fact

The Board found that the Applicants are requesting the following variances:

1. A variance of 2.2 feet from the five (5) feet side yard setback requirement on the west side for an existing garage; and
2. A variance of 2.5 feet from the five (5) feet side yard setback requirement on the west side for an existing garage.

This property is located at the northeast side of South Carolina Avenue approximately 88 feet northeast of North Bay Shore Drive (911 Address: 9 South Carolina Avenue, Milton) said property being identified as Sussex County Tax Map Parcel Number 235-4.13-5.00 (hereinafter "the Property"). After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a survey dated October 17, 2001, an administrative variance approval, property record information, photographs, an elevation certificate, 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 Mark Keyasko was sworn in to testify about the Application. Mr. Keyasko submitted an exhibit as well.
4. The Board found that Mr. Keyasko testified that he owns a modest bungalow in Broadkill Beach and he raised the dwelling 11 years ago. He noted that he bought the Property in 2001 and the house had been vacant for many years at that time.
5. The Board found that Mr. Keyasko testified that he plans to raise that garage above grade as the insurance company will not insure anything below the level of the house. He noted that the garage will remain in the same footprint.
6. The Board found that Mr. Keyasko testified that the house measures 23 feet by 23 feet with a small porch and the garage provides some additional storage space. He also noted that the hot water heater for the house is located in the garage.
7. The Board found that Mr. Keyasko testified that the septic system is behind the garage and there are other utilities near the garage as well so it cannot be located elsewhere on the Property.
8. The Board found that Mr. Keyasko testified that he has the support of neighbors.
9. The Board found that Mr. Keyasko testified that the garage will match the house and will have fireproof siding and will have solar panels.
10. The Board found that Mr. Keyasko testified that the garage will be salt box in shape and is a small structure measuring 12 feet by 20 feet.
11. The Board found that Mr. Keyasko testified that the Property is served by a septic system and public water.

12. The Board found that Mr. Keyasko testified that this is a high risk area; though there have been no flooding issues on the Property. He advised the Board that, if the garage creates any run off to the neighboring property, he will install a gutter.
13. The Board found that Mr. Keyasko testified that he believes the house was built in 1955 and that the garage may be the same age as the house due to the material used. He believes the garage was built prior to 1970.
14. The Board found that Mr. Keyasko testified that the garage will be raised 4 feet on one side and 8 feet on the other side.
15. The Board found that Mr. Keyasko testified that the garage will not present visibility issues for neighbors.
16. The Board found that Mr. Keyasko testified that there will not be any steps that encroach into the setbacks.
17. The Board found that Paul May and Daniel Kopp testified in support of the Application.
18. The Board found that Mr. May testified that he lives in the neighborhood and he believes that the Applicant's proposal will improve the neighborhood.
19. The Board found that Mr. Kopp testified that the dwelling on the Property was built in 1955 and was originally a fishing shack. He believes that Mr. Keyasko has improved the dwelling and that raising the garage will improve the neighborhood as well.
20. The Board found that two people appeared in support of and no one appeared in opposition to the Application.
21. 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 for the variances met the standards for granting a variance. The findings below further support the Board's decision to approve the Application for the variances.
 - a. The Property is unique due to its size, shape, and development. The Property is developed by a small dwelling which was built in 1955 and a small garage. The Property is serviced by a septic system, which occupies a portion of the building envelope. The building envelope is small as the lot consists of only 5,000 square feet. The Property is also subject to flood plain regulations which necessitate that structures be elevated to obtain adequate insurance. The Applicants seek to raise the existing garage above flood plain elevation standards so that the structure can maintain insurance coverage. These unique characteristics of this Property have created a limited building envelope and have created an unnecessary hardship and exceptional practical difficulty for the Applicants who elevate the garage above the flood plain elevation 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, 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 Applicants seek to elevate the garage on the lot but is unable to do so without violating the Sussex County Zoning Code. The Board is convinced that the variances are necessary to enable the reasonable use of the Property as the variances will allow the garage to be elevated 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 Applicants. The Board notes that the garage provides storage for the Applicants and is needed due to the small size of the existing home. The garage must be elevated due to flood plain regulations.

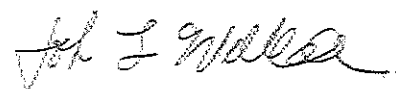
- d. The unnecessary hardship and exceptional practical difficulty were not created by the Applicants. As previously stated, the Property has unique conditions and these conditions have resulted in a limited building envelope on the Property. These conditions have created the unnecessary hardship and exceptional practical difficulty. Furthermore, the Applicants are constrained by the location of the existing house, utilities, and septic system.
- 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 the elevation of the garage will have no effect on the character of the neighborhood. The garage will be located in the same location as the existing garage and there was no substantial evidence that elevating the garage would somehow alter the essential character of the neighborhood. The Board notes that no letters in opposition or testimony in opposition were presented to the Board but the Board heard testimony from neighbors who support the Application.
- f. The variances sought are the minimum variances necessary to afford relief and the variances requested represent the least modifications possible of the regulation at issue. The Applicants have demonstrated that the variances sought will allow the Applicants to reasonably elevate the garage on the Property. The Board is convinced that the Applicants explored other options for the location of the garage but was constrained by the conditions of the lot.
- 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, and Mr. John Williamson. No Board Member voted against the Motion to approve the variance application. Mr. Travis Hastings and Mr. Jordan Warfel 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 February 7, 2022