

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

**IN RE: DAVID POPPEL**

**(Case No. 12641)**

A public hearing was held after due notice on December 20, 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 variances from the front yard setback requirements for proposed and existing structures.

Findings of Fact

The Board found that the Applicant is requesting the following variances:

1. A variance of 21.8 feet from the twenty-five (25) feet front yard setback requirement for a proposed garage;
2. A variance of 24.69 feet from the twenty-five (25) feet front yard setback requirement for an existing shed; and
3. A variance of 24.77 feet from the twenty-five (25) feet front yard setback requirement for an existing shed.

This application pertains to certain real located at the southwest side of Old Lighthouse Road within the Cape Windsor Subdivision (911 Address: 38846 Old Lighthouse Road, Selbyville); said property being identified as Sussex County Tax Map Parcel Number 533-20.18-171.00 ("the Property"). After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, aerial photographs of the Property, a site plan of the Property dated October 19, 2021, the Findings of Fact for Case No. 9055-2005, 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 Matthew Saxe, who is the Applicant's contractor, and David Poppel were sworn in to give testimony about the Application.
4. The Board found that Mr. Saxe testified that the Property is a uniquely shaped lot.
5. The Board found that Mr. Saxe testified that the existing shed was on the Property when purchased by Mr. Poppel and that the existing shed consists of less than 200 square feet.
6. The Board found that Mr. Saxe testified that the area for the proposed garage is the only area that could be developed for parking and that the garage will be used to park 2 cars.
7. The Board found that Mr. Saxe testified that Mr. Poppel uses this property as a vacation property and would like to be able to leave a vehicle on this lot without fear of it being vandalized, stolen, or damaged by weather. He noted that there is currently no protection for a vehicle.
8. The Board found that Mr. Saxe testified that the variances will not alter the essential character of the neighborhood as the garage will be finished to match the existing home.

9. The Board found that Mr. Saxe testified that there is approximately 6 feet from the edge of paving of Old Lighthouse Road to the front property line.
10. The Board found that Mr. Saxe testified that the proposed garage will measure 17 feet by 22 feet and that there will be approximately 4 feet between the dwelling and the proposed garage.
11. The Board found that Mr. Saxe testified that the garage will be no closer to the road than the existing shed.
12. The Board found that Mr. Poppel testified that the dwelling was placed on short pilings so a car cannot be parked under the home. He noted that other homes in the neighborhood are built on taller pilings.
13. The Board found that Mr. Poppel testified that there is no homeowner association approval needed as this is a stand-alone property and the Property is not part of the Cape Windsor subdivision.
14. The Board found that Mr. Poppel testified that he purchased the Property three years ago.
15. The Board found that Mr. Poppel testified that Old Lighthouse Road is a dead end street and there is not much traffic on this road.
16. The Board found that Mr. Poppel testified that there are no neighbors to the north or west of the site.
17. The Board found that Mr. Poppel testified that the proposed garage will not create any visibility issues.
18. The Board found that Mr. Poppel testified that the existing shed is anchored and there have been no complaints from the neighbors. He also noted that the shed has a deck.
19. The Board found that Mr. Poppel testified that the garage cannot be attached to the house.
20. The Board found that Mr. Poppel testified that the shed is approximately 7 years old and he has received no complaints about the shed.
21. The Board found that no one appeared in support of or in opposition to the Application.
22. 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 shape, size, and historical development. The Property is a small lot consisting of approximately 6,700 square feet and is only 20.07 feet deep on the northwest side of the lot. These conditions have created an exceptionally limited and oddly shaped building envelope that is further limited by the existing dwelling located on the lot. The Board notes that the dwelling is shaped like a triangle and is on pilings but the pilings are not tall enough to allow parking under the home. The Property is also adjacent to a canal which makes development to the rear of the Property difficult. The unique conditions of the Property have created an exceptional practical difficulty and unnecessary hardship for the Applicant who seeks to reasonably develop the Property with a garage and to retain an existing shed.
  - 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 and to retain an existing shed on the lot but is unable to do so without violating the Sussex County Zoning

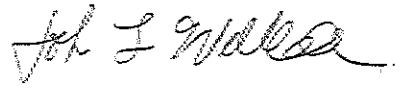
- Code. The Board is convinced that front yard variances are necessary to enable the reasonable use of the Property as the variances will allow the Applicant to have reasonable storage for his vehicles and other belongings.
- d. The exceptional practical difficulty and unnecessary hardship were not created by the Applicant. The Applicant did not create the unusual conditions of the Property. The Property was created by a prior owner and the house and shed were placed on the lot prior to the Applicant's purchase of the Property. The unique characteristics of the Property are clear when reviewing the survey and the Applicant's testimony. The Board is convinced that the exceptional practical difficulty and unnecessary hardship were not created by the Applicant but was created by the lot's unique characteristics and the development of the lot by a prior owner.
  - 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 variances will have no effect on the character of the neighborhood. The variances will allow the Applicant to reasonably develop the lot with a garage and to retain a shed for storage. The shed has been on the lot for approximately 7 years and no complaints were noted in the record. While the structures will be close to the front property line, the adjacent road is a dead-end street that is lightly traveled and there is a gap between the edge of paving of Old Lighthouse Road and the front property line. There was no evidence that the variances would somehow alter the essential character of the neighborhood or be detrimental to the public welfare.
  - 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 Applicant has demonstrated that the variances sought will allow the Applicant to reasonably develop the Property with a garage large enough to house 2 vehicles and to keep an existing shed on the lot. No additions or modifications to the shed are proposed.
  - 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 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 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.