

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: ORLANDO FIGUEROA

(Case No. 12644)

A public hearing was held after due notice on February 7, 2022. 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 front yard setback requirement for a proposed garage.

Findings of Fact

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

1. A variance of 20 feet from the thirty (30) feet front yard setback requirement for a proposed garage; and
2. A variance of 14 feet from the thirty (30) feet front yard setback requirement for a proposed garage

This application pertains to certain real located on the north side of Weigelia Drive approximately 340 feet east of Wilson Hill Road (911 Address: 15421 Weigelia Drive, Georgetown); said property being identified as Sussex County Tax Map Parcel Number 231-3.00-24.00 ("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 building permit application, a garage addition floor plan dated July 25, 2021, 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 Juan Turcios, who is the Applicant's contractor, and Orlando Figueroa were sworn in to give testimony about the Application. Mr. Turcios submitted a petition from neighbors supporting the Application.
4. The Board found that Mr. Turcios testified that his client was unable to build a garage due to the setback requirement.
5. The Board found that Mr. Turcios testified that, due to the wetlands in the yard, it limits buildable space and that, due to the setbacks on the side yard, it limits the buildable space.
6. The Board found that Mr. Turcios testified that, if the garage was built in the side yard, only 1 car would fit in the garage.
7. The Board found that Mr. Turcios testified that the owner purchased the Property with an existing structure and septic system in place.
8. The Board found that Mr. Turcios testified that they have spoken with the neighbors who do not oppose.
9. The Board found that Mr. Turcios testified that this is the smallest structure buildable to accommodate the owner's needs and that, if the garage was built it compliance, the garage would only be 20 feet.

10. The Board found that Mr. Turcios testified that the driveway goes to the edge of the road and the garage will be 25 feet from the road.
11. The Board found that Mr. Turcios testified that the septic system takes up a large part of the back yard and makes it unbuildable.
12. The Board found that Mr. Turcios testified that the structure will not obstruct visibility from the road.
13. The Board found that Mr. Turcios testified that one car will be parked in the driveway.
14. The Board found that Mr. Turcios testified that there will not be frequent visitors.
15. The Board found that Mr. Turcios testified that they explored alternative options for building the structure and were still running into setback requirement issues.
16. The Board found that Mr. Turcios testified that he measured the distance from the house to the property line but a survey was conducted also and was submitted to the Board and he does not have a copy of the survey with him. He noted that he measured himself from the property line to the house and the proposed garage. He stated that he will get a new survey but he confirmed the measurements on the documents submitted.
17. The Board found that Mr. Turcios testified that the garage will measure 30 feet deep.
18. The Board found that Mr. Turcios testified that there will be no steps from to the road side of the garage.
19. The Board found that Mr. Figueroa testified that five neighbors signed letters in approval of the proposed garage.
20. The Board found that Mr. Figueroa testified that he wishes to build this garage to store his car. He noted that he has 3 cars and is asking for a two-car garage.
21. The Board found that Mr. Figueroa testified that the lot consists of approximately 0.25 acres.
22. The Board found that Mr. Figueroa testified that no homeowner association approval is needed.
23. The Board found that Mr. Figueroa testified that the third car will be parked on the left side of the garage in the side yard and that he can park three cars on his property.
24. The Board found that no one appeared in support of or in opposition to the Application.
25. The Board voted to leave the record open for the limited purpose of allowing the Applicant to submit an updated survey by March 31, 2022, and to hold a second hearing on April 4, 2022, to allow the Applicant and the public to comment on that survey. The Applicant later submitted a survey of the Property dated March 22, 2022, and the Board held a second hearing on April 4, 2022, at which time the Applicant failed to appear and no persons from the public appeared in support of or in opposition to the Application.
26. 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 failed to meet the standards for granting a variance. The findings below further support the Board's decision to deny the Application.
  - a. The Applicant failed to demonstrate that the Property was unique and that the uniqueness of the Property has created an exceptional practical difficulty. The lot is a nearly rectangular lot of a similar size, shape, and development of other lots in the area. The Applicant failed to convince the Board that there was some unique physical condition which has created an exceptional practical difficulty or unnecessary hardship. The lot is already improved by a dwelling and the Applicant seeks to build a large garage that will encroach into the front yard setback area. The Applicant did not present substantial evidence of unique topography or other conditions which would effectively limit his ability to develop the Property and which created an exceptional practical difficulty. Rather, the difficulty is clearly the result of

- the Applicant's intention to construct the garage within the setback area. As such, the Applicant has failed to demonstrate that there was some unique condition which has created the exceptional practical difficulty.
- b. The Applicant failed to prove that the Property could not be developed in strict conformity with the Sussex County Zoning Code. Rather, the Property is already developed in strict conformity with the Code with a dwelling. The Applicant now seeks to add a garage to the Property but the garage does not fit within the building envelope and will encroach into the front yard setback area. The Applicant failed to demonstrate that there was no other way to reasonably develop the lot without a variance. The Board was simply not convinced that the Applicant could not otherwise develop the Property in compliance with the Code. Perhaps the garage would not be in the exact location where the Applicant wants it to be located or be the size the Applicant wishes but the Property appears to have a large enough building envelope for the Applicant to develop the Property in compliance with the Sussex County Zoning Code. This, of course, assumes that the garage is even needed for the Applicant to reasonably use the lot. For these reasons, the Board finds that the Property could be developed in strict conformity with the Code and that the variances are not necessary to enable reasonable use of the Property.
  - c. The Board finds that the Applicant is creating his own exceptional practical difficulty by proposing to a construct a garage which does not fit within the building envelope. The Applicant's decision to construct this garage in this location is the reason for the need for a variance and has nothing to do with the size, shape, or condition of the Property. There is no unusual condition to the Property which has created this difficulty. The building envelope appears to otherwise be able to fit a garage, albeit a smaller one, without the need for the variance. The Board was not convinced that the variance request was the product of a *need*. Instead, the variance request appears to be the product of a *want* as the Applicant seeks to build the garage as proposed for purposes of convenience, profit, and / or caprice. Since the Applicant can develop the Property in compliance with the Sussex County Zoning Code, the need for the variance is something created by the Applicant's wants rather than an unusual physical condition relating to the Property. The Applicant has thus created his own exceptional practical difficulty.
  - d. Since the variances are not necessary to enable the reasonable use of the Property, the Board also finds that the variances requested are not the minimum variances necessary to afford relief. Furthermore, the Board finds that no variance is needed to afford relief since there is space to develop the Property in compliance with the Sussex County Zoning Code.
  - e. The Board also has concerns that the approval of this request would embolden others in the neighborhood to seek similar relief.

The Board denied the variance application finding that it failed to meet the standards for granting a variance.

Decision of the Board

Upon motion duly made and seconded, the variance application was denied. The Board Members in favor of the motion to deny were Dr. Kevin Carson, Mr. Travis Hastings, and Mr. John Williamson. Mr. Jordan Warfel voted against the motion to deny the Application. Mr. Jeffrey Chorman did not participate in the discussion or vote on 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 June 6, 2022