

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: MARK E. HELNER

(Case No. 12662)

A hearing was held after due notice on March 7, 2022. The Board members present were: Dr. Kevin Carson, Mr. Travis Hastings, Mr. Jordan Warfel, and Mr. John Williamson.

Nature of the Proceedings

This is an application for variances from the front yard, rear yard, and corner front yard setback requirements for existing and proposed structures.

Findings of Fact

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

1. A variance of 2.2 feet from the thirty (30) feet front yard setback requirement for an existing dwelling;
2. A variance of 2.3 feet from the thirty (30) feet front yard setback requirement for an existing dwelling;
3. A variance of 4.9 feet from the five (5) feet rear yard setback requirement for an existing shed;
4. A variance of 4.2 feet from the five (5) feet rear yard setback requirement for an existing shed; and
5. A variance of 8.8 feet from fifteen (15) feet corner front yard setback requirement along West Mint Place for a proposed garage.

This application pertains to certain real property that is located at the southeast side of Mulberry Knoll Road at the intersection of Mulberry Knoll Road and West Mint Place within the Mulberry Knoll subdivision (911 Address: 20640 Mulberry Knoll Road, Lewes); said property being identified as Sussex County Tax Map Parcel Number 334-18.00-72.00 ("the Property"). After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a site plan dated May 3, 2021, property record card information, photographs, letters of support of the Application, 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 seven (7) letters in support of and no correspondence in opposition to the Application.
3. The Board found that Mark Helner was sworn in to give testimony about the Application. William Schab, Esquire, appeared on behalf of the Applicant.
4. The Board found that Mr. Schab stated that the Applicant and his late wife purchased the Property twelve (12) years ago after a foreclosure. According to Mr. Schab, the house has not changed since the Applicant acquired the Property but there are two bump-outs in the front of the house for closets and there are variances needed for the existing house.
5. The Board found that Mr. Schab stated that the Property is unique as it is a corner lot and the house was placed without a garage in the middle of the lot thereby limiting the buildable area.
6. The Board found that Mr. Schab stated that almost every other home in the neighborhood has a garage and the construction of the garage will bring the Property more into conformity with the neighborhood. He noted that the Applicant cannot construct a garage without a variance.
7. The Board found that Mr. Schab stated that, when the Property was being negotiated during foreclosure, the previous shed was removed and the septic system was

damaged during the removal and the septic system had to be replaced. He noted that replacing the septic system further limited the buildable area.

8. The Board found that Mr. Schab stated that the Applicant used a shed dealer who placed the shed at the edge of the property line in roughly the same location as the prior shed. According to Mr. Schab, the shed has been on the Property for 12 years.
9. The Board found that Mr. Schab stated that the Applicant received letters of support from neighbors, including the most adjacent neighbor to the rear. He noted that the neighbor to the rear likes the shed as it creates a barrier.
10. The Board found that Mr. Schab stated that the front and rear variances are needed to correct existing problems and that the front of the home was not created by the Helners as they had no part in placement of the home on the lot.
11. The Board found that Mr. Schab stated that the garage is necessary to enable the reasonable use of the Property and that it is an undue hardship for this client not to have a garage. He argued that the garage is actually small for his client's needs.
12. The Board found that Mr. Schab stated that there is no sidewalk in the neighborhood but there is approximately 15 feet between the edge of paving of West Mint Place and the property line so the encroachment is less noticeable.
13. The Board found that Mr. Schab stated that these variances are the minimum variances in order to use the home in the way his client needs.
14. The Board found that Mr. Schab stated that the survey notes other additions which do not require variances.
15. The Board found that Mr. Schab stated that, if the Property were not a corner lot, his client would not need a variance for the garage.
16. The Board found that Mr. Helner affirmed the statements made by Mr. Schab as true and correct.
17. The Board found that Mr. Helner testified that, when he purchased the Property, it was under foreclosure.
18. The Board found that Mr. Helner testified that he does not know who removed the shed and destroyed the septic system but the new septic system was placed where the former shed was located.
19. The Board found that Mr. Helner testified that he would like the garage in order to move to this home full-time and store his car, boat, and additional items.
20. The Board found that Mr. Helner testified that he has spoken with his adjacent neighbors and they wrote letters in support. He also noted that the neighbors behind him would like to paint a mural on the rear of his shed facing their property.
21. The Board found that Mr. Helner testified that he discovered he needed a variance due to a neighbor doing similar work on their property.
22. The Board found that Mr. Helner testified that the four seasons room and screen porch are not built yet.
23. The Board found that Mr. Helner testified that the garage will measure 28 feet by 24 feet.
24. The Board found that Mr. Helner testified that the proposed garage is the minimum necessary due to current landscaping. He noted that there are trees on the lot and he plans to maintain those trees.
25. The Board found that Mr. Helner testified that, if he has to move the shed, it will be very close to the back deck and he would be unable to open the doors.
26. The Board found that Mr. Helner testified that there is no ramp on the shed.
27. The Board found that Mr. Helner testified that he does have to go on to his neighbor's property to maintain his shed and those same neighbors do the same in order to maintain their shed.
28. The Board found that Mr. Helner testified that he is trying to maximize the space he can obtain as this will be his primary home because he owns cars, a boat, jet skis, and wood working equipment that he wants to place in the garage.

29. The Board found that Mr. Helner testified that no homeowner association approval is needed.
30. The Board found that Mr. Helner testified that the garage will not present any visibility issues along West Mint Place and that the garage will be entered from the current driveway off West Mint Place.
31. The Board found that Mr. Helner testified that there is no basement and minimal storage in the attic.
32. The Board found that Mr. Helner testified that he maintains the property behind his neighbor's shed as well as his own.
33. The Board found that no one appeared in support of or in opposition to the Application.
34. 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 met the standards for granting a variance subject to modification as noted below. The findings below further support the Board's decision to approve the Application.
 - a. The Property is unique due to its size, shape, and development. The lot is a corner lot measuring 9,951.71 square feet and is located at the intersection of two roads. Due to the shape and size of the lot, the buildable area is limited and is further limited by the corner front yard setback requirements. Moreover, the Property was developed by a dwelling by a prior owner and the home is located in the center of the lot. The dwelling has no basement and limited storage space. The Property is serviced by a septic system that also takes up a portion of the building envelope. The lot also has trees which also limit the buildable area. These conditions are unique and have created an exceptional practical difficulty and unnecessary hardship for the Applicant who seeks to retain the existing shed and dwelling and to build a garage as proposed.
 - 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 which limit the developable options for the home, garage, and shed. The Applicant seeks to retain these structures and to make other reasonable improvements 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 Applicant to retain the existing dwelling and shed and build a garage as proposed. The Board is convinced that the shape and location of the dwelling and garage are also reasonable, which is confirmed when reviewing the site plan provided by the Applicant. The Board finds that the garage will provide the Applicant with reasonable storage that is missing on the lot due to the lack of basement. The Board notes, however, that the shed can likely be moved off the rear property line based on the modification below.
 - d. The unnecessary hardship and exceptional practical difficulty were not created by the Applicant. The Applicant did not create the unusual conditions of the Property. The dwelling on the lot was placed by a prior owner and has been on the Property for many years. The Property is also improved by a septic system that replaced a prior system that was damaged. These conditions have resulted in a limited development options for the Applicant and have created the exceptional practical difficulty and unnecessary hardship. The unique characteristics of the Property are clear when reviewing the survey and the testimony presented by the Applicant.

The Board is convinced that the unnecessary hardship and exceptional practical difficulty were not created by the Applicant but were created by the lot's unique characteristics and the development thereof 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 structures will have no effect on the character of the neighborhood. The testimony indicates that the existing home and shed have been on the Property for many years. There was no substantial evidence which convinced the Board that the variances for these structures would alter the alter the essential character of the neighborhood. Rather, the neighbors support these requests, including the addition of the garage. The testimony reflects that there are other garages in the neighborhood and the garage will bring the property into conformity with the neighborhood. The Board also notes that there is a gap between the edge of paving and the property line so that will help minimize the effect of the encroachments into the setback area.
- f. The variances, as modified, are the minimum variances necessary to afford relief and the variances, as modified, represent the least modifications possible of the regulations at issue. The Applicant has demonstrated that the variances, as modified, will allow him to retain the existing structures and to make reasonable improvements on the lot. The Applicant is limited by the Property's unique conditions but the location of these structures minimizes the need to further encroach into the setback areas.
- 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.
- h. The Board approves the variance for the shed provided that the shed be relocated to no closer than 2 feet from the rear property line. The shed is currently less than 1 foot from the rear property line and, while the existing neighbors to the rear do not object to the variance request, the Board has concerns about the impact of a shed in such close proximity to the property line should ownership of the Property or the neighbor's property ever change hands. With a shed so close to the property line, it is unlikely that the shed could be adequately maintained without trespassing onto neighboring lands. The Applicant has demonstrated that some variance is needed for the shed due to the location of the house and the septic system but the Board was not convinced that a variance to the full extent requested by the Applicant was needed. There appears to be space to the rear of the house where the Applicant could move the shed to bring it off the rear property line. The Applicant testified to concerns about opening the shed doors but that problem appears to be self-created because the Applicant is also proposing to add an addition to the rear of the home. Without an addition of that size, there appears to be adequate room to house the shed away from the rear property line. As such, the variance for the shed is approved provided that the shed is no closer than 2 feet from the rear property line.

The Board granted the variance application with modification 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 with modification. The Board Members in favor of the Motion to approve with modification were Dr. Kevin Carson, Mr. Jordan Warfel, and Mr. John Williamson. Mr. Travis Hastings voted against the Motion to approve the variance application with modification. 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 May 2, 2022