

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

**IN RE: JOHN KLEMASH**

**(Case No. 12664)**

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 corner front yard setback and maximum fence height requirements for existing and proposed structures.

Findings of Fact

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

1. A variance of 49.6 feet from the sixty (60) feet corner front yard setback requirement from Piper's Lane for a proposed detached garage; and
2. A variance of 0.5 feet from the 3.5 feet maximum fence height requirement for a fence along the corner front yard.

This application pertains to certain real property located at the intersection of Prestwick Drive and Piper's Lane within the Prestwick Subdivision (911 Address: 24987 Prestwick Drive, Milton); said property being identified as Sussex County Tax Map Parcel Number 230-22.00-168.00 ("the Property"). After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, an aerial photograph of the Property, a survey of the Property dated November 30, 2021, a petition signed by supporters of the Application, photographs, and a portion of the tax map of the area.
2. The Board found that the Office of Planning & Zoning received four (4) letters in support of and no correspondence in opposition to the Application.
3. The Board found that John Klemash was sworn in to give testimony about the Application.
4. The Board found that Mr. Klemash testified that his home was built as a spec home.
5. The Board found that Mr. Klemash testified that structures must be at least 10 feet away from the septic system and that the septic system is located to the rear of the home. He noted that the Property is also served by well water.
6. The Board found that Mr. Klemash testified that his home is 60 feet from Piper's Lane and that the placement of his proposed garage will not affect visibility from the roadway.
7. The Board found that Mr. Klemash testified that his garage will not be taller than his home but will have a second floor which will house a possible home office and storage.
8. The Board found that Mr. Klemash testified that the development is fully established with 33-35 homes and he will have to obtain homeowner association approval.
9. The Board found that Mr. Klemash testified that, if he had been aware of the setback, he might have reconsidered purchasing the Property.
10. The Board found that Mr. Klemash testified that many other properties in the neighborhood have similar garages.

11. The Board found that Mr. Klemash testified that there are irrigation lines on the left side yard of his home.
12. The Board found that Mr. Klemash testified that, due to Covid-19, his wife is primarily working from home.
13. The Board found that Mr. Klemash testified that the Applicants have two (2) vehicles in addition to his work vehicle. The proposed garage would be a standard 2 car garage per Mr. Klemash's testimony. He prefers to use the garage to store his work vehicle for security reasons.
14. The Board found that Mr. Klemash testified that their home has no closets and he converted part of the attached garage into a storage area / wooden locker system thereby eliminating the ability to park two cars in the existing garage.
15. The Board found that Mr. Klemash testified that the proposed garage is the minimum size required to accommodate his needs.
16. The Board found that Mr. Klemash testified that he has two (2) dogs and two (2) young children. He has concerns about the safety of his dogs and children since there is a nearby retention pond.
17. The Board found that Mr. Klemash testified that, due to the placement of the well and irrigation lines on the left side, he would not be able to place his garage on that side of the home.
18. The Board found that Mr. Klemash testified that his fence is currently 3.5 feet tall but he wants to increase it to 4 feet tall.
19. The Board found that Mr. Klemash testified that the fence will be of vinyl material and will butt up to the proposed garage. He noted that the fence will be staying in the exact location it is currently located.
20. The Board found that Mr. Klemash testified that his property line does not go all the way to the paved road as there is a gap between the edge of paving and the property line. He estimated there is approximately 25 feet to the edge of paving.
21. The Board found that Mr. Klemash testified that the variances are the minimum variances requested to obtain relief and maximize his usable area.
22. The Board found that no one appeared in support of or in opposition to the Application.
23. 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 as it is subject to 60 foot setback requirements on 2 sides of the lot, which is unusual, and was developed by a prior owner with a house near the center of the lot. To the rear of the house is a septic system and drainfield which occupy a large portion of the buildable area. The house lacks sufficient storage space and the Applicant needs a garage to alleviate storage issues as well as to provide space to park vehicles. The area where the garage could reasonably be located is near the existing driveway and that driveway is located near Piper's Lane. The Property's unique conditions have thus created an unnecessary hardship and exceptional practical difficulty for the Applicant who seeks to construct a garage and fence on the lot.
  - 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 Property and the situation, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Applicant seeks to construct a garage and fence but are unable to do so while complying with the Sussex County Zoning Code. The Board is thus convinced that the variances are necessary to enable the reasonable use

of the Property as the variances will allow the Applicant to construct the garage and fence on the lot. The Board is convinced that the size, shape, and location of the structures are reasonable. The fence will provide additional safety to the Applicant's young children and dogs from a nearby stormwater management pond while the garage will provide additional storage space that is lacking in the dwelling.

- d. The unnecessary hardship and exceptional practical difficulty were not created by the Applicant. As discussed above, the Property has unique conditions which have limited the Applicant's ability to reasonably develop the Property. The Applicant did not create the unique conditions of the lot. The Board was convinced that the Applicant has not created the exceptional practical difficulty and unnecessary hardship. Furthermore, the Board is convinced that the Applicant did not come to the Property with an illegal use in mind. Rather, the Applicant is limited by the physical conditions of the Property and the Applicant needs the variances in order to reasonably develop the Property as proposed.
- 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 construct a reasonably sized garage and fence on the lot. The garage will be adjacent to the existing driveway and the fence will be in the same location as an existing fence. There were no complaints about the location of the fence. Likewise, there was no objection to the proposed garage and no evidence was presented which demonstrate that the variances would somehow alter the essential character of the neighborhood or be detrimental to the public welfare. Rather, the Board received letters of support from neighbors about the Application. The Applicant will also have to obtain approval from his homeowners association so that process will provide neighbors with an additional opportunity to weigh in on the proposal.
- 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 build a reasonably sized garage and fence on 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.
- h. The approval is subject to the condition that the Applicant obtain approval from his homeowners association and submit evidence of said approval to the Office of Planning & Zoning.

The Board granted the variance application with conditions 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 conditions. The Board Members in favor were Dr. Kevin Carson, Mr. Travis Hastings, Mr. Jordan Warfel, and Mr. John Williamson. No Board Member voted against the motion to approve Application with conditions. 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