

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: CHARLES ALBANO

(Case No. 12671)

A hearing was held after due notice on March 21, 2022. The Board members present were: Mr. Jeff Chorman, Mr. John T. Hastings, and Mr. John Williamson.

Nature of the Proceedings

This is an application for a variance from the front yard setback and side yard setback requirements for a proposed structure.

Findings of Fact

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

1. A variance of 20.4 feet from the thirty (30) feet front yard setback requirement for an existing and proposed detached garage;
2. A variance of 5.1 feet from the ten (10) feet side yard setback requirement on the northwest side for an existing and proposed detached garage;
3. A variance of 0.8 feet from the ten (10) feet side yard setback requirement on the northwest side for an existing dwelling;
4. A variance of 4.5 feet from ten (10) feet side yard setback requirement on the northwest side for existing steps and a deck;
5. A variance of 6.1 feet from ten (10) feet side yard setback requirement on the southeast side for an existing deck.

This application pertains to certain real property located on the east side of Shore Drive approximately 116 feet northwest of Dogwood Street (911 Address: 9307 Shore Drive, Milford); said property being identified as Sussex County Tax Map Parcel Number 230-17.00-60.00 (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 of the Property dated January 26, 2022, schematic plans, letters of support, 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 four (4) letters in support of and no correspondence in opposition to the Application.
3. The Board found that Mark Redden, who is the Applicant's architect, and Charles Albano were sworn in to give testimony about the Application.
4. The Board found that Mr. Redden testified that the Applicants are attempting to add a level to the existing garage to create a workspace of an art studio and home office. He noted that the area will not be used for commercial workspace and that the Applicants have been working from home more due to the pandemic and would like to free up the space in their guest bedroom.
5. The Board found that Mr. Redden testified that the Property is unique due to the location of a beach community and being an undersized lot.
6. The Board found that Mr. Redden testified that the septic system takes up the majority of buildable area on the lot and that the Property is unbuildable without the variance.
7. The Board found that Mr. Redden testified that the Applicants purchased the home as it stands a few years ago and the home was built in the 1960s and the garage was built in the 1980s. The Applicants seek to grandfather in the items existing but add to the Property as well.

8. The Board found that Mr. Redden testified that the variances will not alter the essential character of the neighborhood as many of the neighbors have oversized garages.
9. The Board found that Mr. Redden testified that the lots are set up differently as the lots have the beach as their front yard rather than toward the roadway and that leads to a different orientation of the lots.
10. The Board found that Mr. Redden testified that the variances sought are the minimum variances.
11. The Board found that Mr. Redden testified that the Property is also limited by the location of powerlines.
12. The Board found that Mr. Redden testified that the neighbors to the north and south have garages of this size.
13. The Board found that Mr. Redden testified that this addition will not impede views down the street or block driveway views.
14. The Board found that Mr. Redden testified that the garage will be set back a similar distance from a neighbor's garage.
15. The Board found that Mr. Redden testified that the Applicants will still maintain plenty of room to park their vehicles.
16. The Board found that Mr. Redden testified that the HVAC system will be a mini split system with piping mounted to the exterior wall due to the flood plain and will not be located within the setbacks.
17. The Board found that Mr. Albano testified that he received letters of support from owners of Lot 61, Lot 62, Lot 59, and Lot 175 and the neighbors who submitted letters in support constitute most of the adjacent neighbors.
18. The Board found that Mr. Albano testified that there have not been any complaints from neighbors about existing structures on the Property.
19. The Board found that Mr. Albano testified that there is a DNREC dune line separating the Property from the beach which renders a portion of his property unbuildable.
20. The Board found that two individuals appeared in support of and no persons 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 unrebutted, 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 a narrow lot measuring only 49.98 feet wide that is also subject to DNREC dune restrictions as the lot is adjacent to the Delaware Bay. The Property was developed with a dwelling prior to the enactment of the Sussex County Zoning Code and is serviced by a septic system that takes up a large part of the building envelope. These unique conditions greatly limit the buildable area of the lot and it is clear to the Board that the lot's unique characteristics have created an unnecessary hardship and exceptional practical difficulty for the Applicants who seek to retain existing structures and to reasonably renovate an existing garage 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 lot, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property is a narrow and has a limited building envelope due to the dune restrictions and septic system. The Applicants seek to retain the existing structures and to renovate an existing garage on the Property but are 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 Applicants to retain the existing structures and reasonably renovate the garage on the Property. The Board is convinced that the shape and location of the structures are also reasonable, which is confirmed when reviewing the survey provided by the Applicants. The Board notes that the garage renovation will be to provide office space for the Applicants and that the need for a home office arose as a result of the Covid-19 pandemic.

- d. The exceptional practical difficulty and unnecessary hardship were not created by the Applicants. The Applicants did not create the lot, place the septic system, or create the dune restrictions. Those conditions have limited the building envelope of the lot. Moreover, the Applicants did not place the existing structures on the lot. The unique characteristics of the Property are clear when reviewing the survey. The Board is convinced that the unnecessary hardship and exceptional practical difficulty were not created by the Applicants but were created the lot's unique characteristics and the prior development thereof.
- 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 garage addition will be similarly situated to other garages in this neighborhood. There was no evidence that the garage would present visibility concerns along Shore Avenue. The testimony also reflects that there are similar structures in the neighborhood and that neighbors support the request. The Board also notes that the other structures have been on the Property for many years and no complaints about those structures were noted in the record. Furthermore, no evidence was presented which would indicate that the variances would somehow alter the essential character of the neighborhood or be detrimental to the public welfare. The Board also notes that the lot is oriented so that the Shore Drive side of the lot is developed as the rear with the house facing the Delaware Bay.
- 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 Applicants have demonstrated that the variances sought will allow the Applicants to construct a reasonably sized garage addition and to retain the existing structures on the lot. The Board notes that the Applicants were constrained by the unique conditions of the lot and have limited the size of the garage addition to minimize the variances requested.
- 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 were Mr. Jeffrey Chorman, Mr. Travis Hastings, and Mr. John Williamson. No Board Member voted against the Motion to approve the variance application. Dr. Kevin Carson 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 May 16, 2022.