

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: HERBERT REYNOLDS

(Case No. 12676)

A hearing was held after due notice on April 4, 2022. 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, side yard setback, rear yard setback, maximum lot coverage and separation distance setback requirements for a proposed structure.

Findings of Fact

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

1. A variance of 5 feet from the five (5) feet front yard setback requirement for a proposed detached garage;
2. A variance of 5 feet from the five (5) feet rear yard setback requirement for a proposed garage;
3. A variance of 5 feet from the five (5) feet side yard setback requirement on the west side for a proposed garage;
4. A variance of 7.18 feet from the twenty (20) feet separation requirement between structures in a manufactured home park for a proposed garage to be located 12.82 feet from a dwelling on the adjacent Lot 38; and
5. A variance of 13% from the 35% lot coverage requirement (or 870 square feet over the 35% lot coverage requirement) for a proposed garage in a manufactured home park.

This application pertains to certain real property located on the north side of Jasper View Lane within the Masseys Landing manufactured home park (911 Address: 37269 Jasper View Lane, Millsboro); said property being identified as Sussex County Tax Map Parcel Number 234-25.00-31.00-8874 ("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 site plan of the Property dated October 18, 2021, a letter from Massey's Landing Park, Inc., a survey of the Property dated October 18, 2021, correspondence, an administrative variance approval, and a portion of the tax map of the area.
2. The Board found that the Office of Planning & Zoning received two (2) letters in support of and no correspondence in opposition to the Application.
3. The Board found that Herbert Reynolds was sworn in to testify about the Application.
4. The Board found that Mr. Reynolds testified that he recently retired from two (2) businesses restoring cars and selling parts which he has been doing such for most of his life and he wants to be able to work on his own vehicles but not as a mechanic for others.
5. The Board found that Mr. Reynolds testified that this garage was not his first choice of options for a structure as other options were not feasible. He noted that he looked at raising his house but a structural engineer said he could not do that and he also looked at offsite options but those options did not work for him either.

6. The Board found that Mr. Reynolds testified that he wants to store vehicles which he has had since his high school days and he is downsizing from his current home in Middletown where he had a 40 feet by 60 feet shop.
7. The Board found that Mr. Reynolds testified that he has support from his neighbors.
8. The Board found that Mr. Reynolds testified that he would take care of any maintenance of his structure on an "as needed" basis.
9. The Board found that Mr. Reynolds testified that his lot is unique due to the sewer pump and telephone pole at his front yard.
10. The Board found that Mr. Reynolds testified that he purchased the lot as it is now and that he would have laid the Property out differently. He noted that all structures on the Property were existing when he purchased the Property.
11. The Board found that Mr. Reynolds testified that his neighbors have garages also including two neighbors who have multi-car garages.
12. The Board found that Mr. Reynolds testified that a smaller garage would not allow him the ability to do what he is attempting.
13. The Board found that Mr. Reynolds testified that the neighbors directly next to him would be the only persons affected as he would have to be on the neighbor's property to maintain the structure.
14. The Board found that Mr. Reynolds testified that he asked for no overhang on the roof towards the neighbor's property and that the garage will have a pitched roof.
15. The Board found that Mr. Reynolds testified that the Property has issues with flooding from the canal as the lagoon crests over the bulkhead.
16. The Board found that Mr. Reynolds testified that the garage would be a one (1) story structure but he is unsure of the exact height.
17. The Board found that Mr. Reynolds testified that he could probably make the garage smaller by about five (5) feet.
18. The Board found that Mr. Reynolds testified that his proposed garage would run the whole depth of his property.
19. The Board found that Mr. Reynolds testified that his neighbor's bump out is a living room or fun room.
20. The Board found that Mr. Reynolds testified that his shed is already located in the neighbor's view line of the lagoon.
21. The Board found that Mr. Reynolds testified that the shed measures 12 feet by 10 feet.
22. The Board found that Mr. Reynolds testified that a garage measuring 20 feet by 20 feet would not allow him to conduct himself in the way he would like.
23. The Board found that Mr. Reynolds testified that, if the pumphouse and telephone pole were not there, he could place his garage there with less need for variance.
24. The Board found that Mr. Reynolds testified that there is 7.41 feet from the edge of paving of Jasper View Lane to the front property line and that the telephone pole appears to be 10 to 15 feet from the road.
25. The Board found that Mr. Reynolds testified that he could do garage measuring 10 feet less, with 5 feet on the front and the rear.
26. The Board found that Mr. Reynolds testified that his home has no entrance from the front. Rather, the entrance is from the rear with steps on the side.
27. The Board found that Mr. Reynolds testified that his runoff would go to the lagoon.
28. The Board found that no one appeared in support of or in opposition to the Application.
29. 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 rectangular lot measuring 100 feet wide by 64 feet deep. The Property actually consists of 2 manufactured home lots identified as Lots 36 and 37. The lot is improved with a dwelling and sheds and the Applicant seeks to remove a shed and to place a large garage on the Property that will extend to the front, rear, and side yard property lines. The Applicant did not present substantial evidence of unique topography or other conditions which convinced the Board that the Applicant would be unable to develop or use the Property in strict conformity with the Code or that those conditions have created an exceptional practical difficulty. Rather, the difficulty is clearly the result of the Applicant's intention to over-develop the Property. 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. The Property has been previously developed with a house but the Applicant intends to further develop the Property with a large garage that will encroach into three setback areas and will significantly develop the Property beyond what is allowed under the Code. The Board is particularly disturbed by the fact that the garage will need a 100% variance from the front, side, and rear yard setback requirements. Rather than developing the lot to comply with the Code's setback requirements, it is clear that the Applicant has chosen not to build in strict conformity with the Code. The Applicant argues that a smaller garage will not suit his needs but the Applicant admits that he is downsizing from a larger home where he maintained a large workshop. The Property is already developed with a house and there was no evidence that the Property could not otherwise be reasonably used without the garage, or one which complied with the Code. While the size and location of a smaller garage, may not be of the size or in the location the Applicant prefers, the Applicant failed to demonstrate that he could not otherwise comply with the Code's setback requirements. Simply put, the Applicant is not entitled to have the garage in this location. 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 construct a garage which does not fit within the building envelope. The Applicant's decision to construct the garage of this size and in this location is the reason for the need for variances 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 lot is a rectangular lot without a unique condition that limits the Applicant's ability to reasonably develop the lot. The Board was not convinced that the variance requests were the product of a *need*. Instead, the variance requests appear to be the product of a *want* as the Applicant seek to build and retain structures 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 variances 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. The Board finds that the Applicant failed to demonstrate that the variances, if approved, would not alter the essential character of the neighborhood, not

permanently impair the appropriate use or development of adjacent property, and not be detrimental to the public welfare. The Applicant has proposed an extreme deviation from the Sussex County Zoning Code by seeking a 100% variance from the front, side, and rear yard setback requirements. It is difficult to see how the garage could be maintained or erected without trespassing on neighboring lands. The Board also has concerns as the Applicant has noted that the lagoon crests over the bulkhead to the rear of the Property and the garage will drain all stormwater to the lagoon. The Applicant presented no substantial evidence as to how the addition of such a large garage would not exacerbate flooding or stormwater issues in the area. The proposed structure also would effectively create a wall along the shared property lines and would threaten the integrity of the buffer areas between properties as intended by the imposition of setback requirements in the Code.

- e. 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. Mr. Reynolds testified that he wants the new garage to use for his cars. The Board was not convinced by the Applicant of a need for this structure, particularly of this size. Rather, the Board finds that no variance is needed to afford relief. The Board also notes that Mr. Reynolds even testified that he could build a smaller garage.

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. Jeffrey Chorman Mr. Travis Hastings, Mr. Jordan Warfel, and Mr. John Williamson. No Board Member voted against the Motion to deny the variance 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