

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

**IN RE: DEVIN FORTNEY**

**(Case No. 12687)**

A hearing was held after due notice on May 2, 2022. The Board members present were: Dr. Kevin Carson, Mr. Jeff Chorman, Mr. John T. Hastings, and Mr. John Williamson.

Nature of the Proceedings

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

Findings of Fact

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

1. A variance of 1.2 feet from the ten (10) feet side yard setback requirement on the north side for a proposed garage addition;
2. A variance of 2.3 feet from the ten (10) feet side yard setback requirement on the north side for a proposed garage addition;
3. A variance of 3.2 feet from the ten (10) feet rear yard setback requirement for a proposed garage addition;
4. A variance of 3.3 feet from the ten (10) feet rear yard setback requirement for the proposed addition and existing garage;
5. A variance of 3.4 feet from the ten (10) feet rear yard setback requirement for the existing garage;
6. A variance of 4.0 feet from the ten (10) feet rear yard setback requirement for an existing attached garage and proposed 2<sup>nd</sup> floor addition; and
7. A variance of 4.1 feet from the ten (10) feet rear yard setback requirement for existing attached garage and proposed 2<sup>nd</sup> floor addition.

This application pertains to certain real property located at the southside of Mercer Avenue within the Orchard Manor Subdivision (911 Address: 33218 Mercer Avenue, Millsboro); said property being identified as Sussex County Tax Map Parcel Number 234-35.05-123.00 (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 March 2, 2022, 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 no correspondence in support of or in opposition to the Application.
3. The Board found that Richard Fortney was sworn in to give testimony about the Application. Mr. Fortney submitted a picture of the Property to the Board.
4. The Board found that Mr. Fortney testified that he and his son own the Property which is located on Oak Orchard and they are seeking variances for an addition above an existing attached garage for additional sleeping quarters.
5. The Board found that Mr. Fortney testified that he believes the existing garage was built in the 1960s and the garage is not in compliance with the Zoning Code.
6. The Board found that Mr. Fortney testified that, when building the addition, the Applicants would like to go straight up for aesthetic and functional purposes.
7. The Board found that Mr. Fortney testified that the lot is long and narrow and that the Property shares a driveway with a neighboring lot.

8. The Board found that Mr. Fortney testified that the Applicants would like to add solar to the Property in the future and the addition and new roof would make that easier and work better.
9. The Board found that Mr. Fortney testified that his son will be residing there full-time.
10. The Board found that Mr. Fortney testified that the Applicants would like to tear down an existing portion of the detached garage and add a storage area.
11. The Board found that Mr. Fortney testified that the Applicants would like to be able to back a trailer in from their common driveway shared with the neighbor. He noted that there is a decorative wall that borders the shared driveway making it difficult to back a trailer into the Property. He believes that they could modify or tear down that section of wall but the Applicants do not want to alter the integrity of what is existing. He also noted that the neighbor who shares the driveway supports the Application.
12. The Board found that Mr. Fortney testified that they are several homes near the Property with structures that encroach into the setback areas.
13. The Board found that Mr. Fortney testified that the Applicants are trying to keep up the structural integrity with the building.
14. The Board found that Mr. Fortney testified that he believes they are asking for the minimum variances.
15. The Board found that Mr. Fortney testified that the attached and detached garage were on the Property when the Applicants purchased the lot.
16. The Board found that Mr. Fortney testified that the garage doors will be coordinated to create a uniformity within the neighborhood. He also noted that other renovations to the existing structures are planned.
17. The Board found that Mr. Fortney testified that their stormwater management is all run underground.
18. The Board found that Mr. Fortney testified that there are no steps proposed and there will not be any kitchen systems added. He noted that there will be an HVAC system added but it will comply with the Zoning Code.
19. The Board found that Mr. Fortney testified that, if the variances were denied, the Applicants would likely not build the structure due to the functionality and practicality. He stated that, if the garage addition were built any smaller, it would be less than functional and not worth the investment.
20. The Board found that Mr. Fortney testified that the object of the building is to have things put away and kept in a neat and tidy manner.
21. The Board found that four persons appeared in support of and no one appeared in opposition to the Application.
22. 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 a long narrow lot with a shared driveway and decorative wall. The Property was developed with a dwelling and other structures prior to the enactment of the Sussex County Zoning Code and the Applicants seek to make reasonable improvements to those structures. 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 shape of the lot and the location of the shared driveway. 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 additional living and storage space. The proposed garage addition on the north side of the lot will house a trailer and will keep that trailer out of sight.
- d. The exceptional practical difficulty and unnecessary hardship were not created by the Applicants. The Applicants did not create the lot, place the structures on the lot, or create the shared driveway. 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 Mercer Avenue. The testimony also reflects that there are similar structures in the neighborhood and that at least one neighbor supports 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.
- 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 Dr. Kevin Carson, Mr. Jeffrey Chorman, Mr. Travis Hastings, and Mr. John Williamson. No Board Member voted against the Motion to approve the variance application. 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 July 11, 2022