

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: JOSEPH P. WOOD, SR.

(Case No. 12692)

A hearing was held after due notice on May 16, 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 a variance from the rear yard setback requirement for a proposed addition.

Findings of Fact

The Board found that the Applicant is requesting a variance of 4 feet from the twenty (20) feet rear yard setback requirement for a proposed attached garage. This application pertains to certain real property located on the east side of Brittingham Road approximately 0.6 miles from Whitesville Road (Route 30) (911 Address: 36394 Brittingham Road, Delmar) said property being identified as Sussex County Tax Map Parcel 532-15.00-6.00 ("the Property"). After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a portion of the tax map of the area, an aerial photograph of the Property, an as-built survey of the Property dated July 15, 2019, a site plan of the Property dated January 10, 2019, photographs, and a drawing.
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 Joe Wood and Barbara Wood were sworn in to testify about the Application.
4. The Board found that Mr. Wood testified that he proposes to build an addition to his home and that he could not afford to do this when he purchased the Property. He noted that he came up with the plan and then learned of the need for the variance.
5. The Board found that Mr. Wood testified that he inquired with the owners of the property behind him as to if they had issue with the addition and they told him about the variance process so he applied for a variance of 2 feet but he probably needs 4 feet in actuality.
6. The Board found that Mr. Wood testified that the neighboring property to the rear of the lot is a field.
7. The Board found that Mr. Wood testified that the new house sits in a different location than the original and they propose to add onto the rear.
8. The Board found that Mr. Wood testified that no steps will project off the addition.
9. The Board found that Mr. Wood testified that the side and rear of the garage will be solid, with windows, and a garage door facing towards the road.
10. The Board found that Mr. Wood testified that the septic restricts his placement of the addition.
11. The Board found that Mr. Wood testified that the way the lot is shaped makes it difficult.
12. The Board found that Mr. Wood testified that the addition will measure 20 feet by 20 feet.
13. The Board found that Mr. Wood testified that he wants to move his tools from the existing garage to the new one so he can park his truck in it.
14. The Board found that Mr. Wood testified that a smaller building would still be close

to the property line.

15. The Board found that Mr. Wood testified that he has a blacktop driveway which the addition will butt up to.
16. The Board found that Ms. Wood testified that the Property is unique and the rear property line is at an angle that will not allow the proposed building to stay 20 feet off of the rear property line.
17. The Board found that Ms. Wood testified that the field adjacent to the rear of the Property is currently tilled by the Workman family and cannot be tilled any closer than 40 feet to the proposed addition. She noted that Mr. Workman has no objection and advised them about the variance application.
18. The Board found that Ms. Wood testified that the Property has been this way since the 1930s.
19. The Board found that Ms. Wood testified that the addition will conform to the neighboring properties.
20. 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 for the variance met the standards for granting a variance. The findings below further support the Board's decision to approve the Application for the variance.
 - a. The Property is unique as it is an oddly shaped lot that was created prior to the enactment of the Sussex County Zoning Code. The unique shape of the lot has created an oddly shaped and limited building envelope that is further limited by the need to have a septic system on the lot. The Board finds that the lot's unique conditions have created an unnecessary hardship and exceptional practical difficulty for the Applicants who seek to construct an addition 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 has a unique and limited buildable area. The Applicants seek to construct an addition but are unable to do so without violating the Sussex County Zoning Code. The Board is convinced that the variance is necessary to enable the reasonable use of the Property as the variance will allow a reasonably sized addition to be constructed on the Property. The Board is convinced that the shape and location of the addition are also reasonable, which is confirmed when reviewing the survey provided by the Applicants. The addition will be located near the driveway and adjacent to the house.
 - d. The unnecessary hardship and exceptional practical difficulty were not created by the Applicants. As previously stated, the Property has unique conditions and these conditions have resulted in a limited building envelope on the Property. These conditions have created the unnecessary hardship and exceptional practical difficulty. The Board also notes that, due to the unique conditions of the lot, there appears no other place where the addition can be located that would serve its intended purpose.
 - e. The variance 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 addition will have no effect on the character of the neighborhood. The neighbor most affected by the variance has indicated support for the request and only a corner of the addition will encroach into the setback area. The Board notes that there was no evidence submitted into the record that the addition will somehow alter the essential character

of the neighborhood. The Board also notes that the rear of the lot is adjacent to a field.

- f. The variance is the minimum variance necessary to afford relief and the variance represents the least modification possible of the regulation at issue. The Applicants have demonstrated that the variance will allow the Applicants to place the reasonably sized addition on the Property. The Board is convinced that the Applicants explored other options for the size, shape, and location of the addition but were constrained by the conditions of 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.

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, Mr. Jordan Warfel, and Mr. John Williamson. No Board Member voted against the Motion to approve 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 July 18, 2022