

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: SCOTT NEWKIRK & KRISTIN NEWKIRK

(Case No. 12704)

A hearing was held after due notice on June 27, 2022. The Board members present were: Dr. Kevin Carson, Mr. Jeffrey 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 and side yard setback requirements for a proposed garage.

Findings of Fact

The Board found that the Applicants are requesting the following variances:

1. A variance of 30 feet from the forty (40) feet front yard setback requirement from Club House Road for a proposed detached garage; and
2. A variance of 3 feet from the five (5) feet side yard setback requirement on the northeast side for a proposed detached garage.

This application pertains to property that is a through lot located on the southeast side of Hickman Drive within the White Creek Manor Subdivision (911 Address: 725 Hickman Drive, Ocean View); said property being identified as Sussex County Tax Map Parcel Number 134-12.00-1036.00 (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 February 15, 2022, pictures, 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 Scott Newkirk and Kristin Newkirk were sworn in to give testimony about the Application.
4. The Board found that Mr. Newkirk testified that the Applicants intend to remove the existing shed and replace it with a detached garage. He noted that the new structure would be 5 feet closer than the shed to the property line at Club House Road.
5. The Board found that Mr. Newkirk testified that the proposed garage will be the same distance from the side property line as the existing shed.
6. The Board found that Mr. Newkirk testified that the garage will have no impact on the rest of the neighborhood and that there are other garages in the neighborhood.
7. The Board found that Mr. Newkirk testified that this garage would increase privacy for them and the most affected neighbors.
8. The Board found that Mr. Newkirk testified that all of the properties on Hickman Drive enter from Hickman Drive and have no vehicular access to Club House Road. He considers the rear yard of the lot to be the portion of the Property that is adjacent to Club House Road.
9. The Board found that Mr. Newkirk testified that their home does not presently have a garage.
10. The Board found that Mr. Newkirk testified that the structure will be set to maintain a distance between the proposed garage and the existing deck off the house. He noted that, if they brought the garage in closer, the garage would impede on the existing deck.

11. The Board found that Mr. Newkirk testified that the proposed garage will measure 16 feet wide by 26 feet deep.
12. The Board found that Mr. Newkirk testified that the tree will be removed and the back of the proposed structure would be about 1 foot in front of the tree to be removed.
13. The Board found that Mr. Newkirk testified that the property line is 16 feet from the edge of paving on Club House Road and that the rear of the structure would be about 26 feet from Club House Road.
14. The Board found that Mr. Newkirk testified that his neighbors support the Application and the homeowner association president offered a letter of endorsement. He believes that the homeowners association will approve the request if the County approves the Application.
15. The Board found that Mr. Newkirk testified that the Property has two (2) front yards creating the issue.
16. The Board found that Mr. Newkirk testified that the house was built prior to the Applicants' purchase of the Property.
17. The Board found that Mr. Newkirk testified that he does not anticipate any traffic issues from Club House Road as there is a tree line there also.
18. The Board found that Mr. Newkirk testified that there have been no complaints about the existing shed.
19. The Board found that Mr. Newkirk testified that the purpose of the new structure is to store a vehicle, lawn equipment, kayaks, and other recreational items.
20. The Board found that Mr. Newkirk testified that it would not be feasible to place the structure in any other way. He noted that, if he turned the garage perpendicularly, there would be no room to turn the car into the garage.
21. The Board found that Mr. Newkirk testified that the garage will not be accessible from the Club House Road side of the Property but will have access from Hickman Drive.
22. The Board found that one person appeared in support of and no one appeared 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 a lot with road frontages on two roads and is subject to two front yard setback requirements even though the Property only has vehicular access from Hickman Drive. The portion of the Property along Club House Road is effectively the rear yard of the lot but is subject to front yard setback requirements. These conditions greatly restrict the building envelope on the Property. While the Property is considered a through lot, the Applicant does not have direct access to Club House Road and only has vehicular access the Property from Hickman Drive. The existing dwelling was also built by a prior owner which limits how the Applicants can reasonably develop the Property. 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 construct a 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 bordered on two sides by roads and has unique setback requirements even though the Applicants can only access the Property from one of those roads. The Applicants seek to construct a reasonably sized 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 construct the garage on the Property. The Board is convinced that the shape and location of these structures are also reasonable, which is confirmed when reviewing the survey provided by the Applicants. The garage will afford the Applicants with reasonable storage space.

- d. The exceptional practical difficulty and unnecessary hardship was not created by the Applicants. The Applicants did not create the lot or enact the setback requirements which have limited the building envelope of the lot. The Applicants also did not construct the house on the lot. Those structures were placed on the lot by a prior owner years ago. The unique characteristics of the Property are clear when reviewing the survey. The Board is convinced that the unnecessary exceptional practical difficulty was not created by the Applicants but was created the lot's unique characteristics.
- 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. There are other similar structures in the community and the proposed garage does not present visibility concerns along Club House Road as the garage will be a significant distance away from the edge of paving of the road. There are also trees between the structures and Club House Road so the garage should not pose a visual threat to traffic along that road. 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 there is a gap between the edge of paving of Club House Road and the property line so the property appears larger than it actually is. Additionally, neighbors have indicated their support of the Application to the Applicants. The Board also notes that the garage will be in a similar location as a prior shed and no complaints about the shed were noted in the record.
- 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 garage on the lot. The garage will afford the Applicants with reasonable storage space and is a reasonably sized garage located in an area where a shed is currently located.
- 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 Board's approval is subject to the condition that the Applicants obtain approval from their homeowners association for the proposed garage and that the Applicants file a copy of the approval with the Office of Planning and 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 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 with conditions.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY



Jeffrey Chorman
Chair

If the use is not established within two (2)
years from the date below the application
becomes void.

Date August 15, 2022.