

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

**IN RE: REUBEN WILKINSON AND BRENDA WILKINSON**

**(Case No. 12723)**

A hearing was held after due notice on August 1, 2022. The Board members present were: Mr. Jeffrey Chorman, Mr. Jordan Warfel, and Mr. John Williamson.

Nature of the Proceedings

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

Findings of Fact

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

1. A variance of 3.2 feet from the ten (10) feet side yard setback requirement on the south side for a proposed foyer addition;
2. A variance 2.7 from the ten (10) feet side yard setback requirement on the south side for a proposed porch addition;
3. A variance of 14.6 feet from the thirty (30) feet front yard setback requirement for a proposed attached garage; and
4. A variance of 1.7 feet from the thirty (30) feet front yard setback requirement for a proposed garage.

This application pertains to property that is located on the east side of Bay Run within the Keen-Wik Sound subdivision (911 Address: 37038 Bay Run, Selbyville); said property being identified as Sussex County Tax Map Parcel Number 533-19.00-346.00 (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 site plan of the Property dated October 28, 2021, a survey of the Property dated October 28, 2021, schematics, photographs, letters of support of the Application, 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 three (3) letters in support of and no correspondence in opposition to the Application.
3. The Board found that Reuben Wilkinson and Brenda Wilkinson were sworn in to give testimony about the Application.
4. The Board found that Mr. Wilkinson testified that the variances are for an entryway and a two (2) car garage to their existing home which the Applicants purchased two (2) years ago and plan to make as their retirement home. He noted that, in September, he will be retiring and they will be relocating to Delaware as permanent residents.
5. The Board found that Mr. Wilkinson testified that the Applicants are seeking the variances due to the unique shape of the Property. He noted that the Property is not a traditional square or rectangle but more of a parallelogram and that, if the Property was a rectangle, no variances would be needed.
6. The Board found that Mr. Wilkinson testified that that, due to the size and shape of the lot, as well as its location between the canal and roadway, they are unable to build onto the home without a variance.
7. The Board found that Mr. Wilkinson testified that the homes within their community of Keen-Wik Sound vary greatly from one another as evidenced by pictures submitted with the Application. He stated that they have submitted photos of other homes in the neighborhood that are similar in size and style to their entryway request.
8. The Board found that Mr. Wilkinson testified that their most adjacent neighbor as well as others in the neighborhood also have two (2) car garages. He also stated

that 100 of the 120 homes have garages and 80 of those 100 have two (2) car garages.

9. The Board found that Mr. Wilkinson testified that he knows specifically of two (2) homes in the community that have obtained variances to build closer to the road than permitted by traditional setbacks.
10. The Board found that Mr. Wilkinson testified that they have shared their proposed renovation design with their neighbors and three (3) of the neighbors closest to them have signed letters in support of the Application.
11. The Board found that Mr. Wilkinson testified that the dimensions of the entryway proposed are 4.5 feet by 9 feet which is the minimum size that would allow the enough clearance to open the door and for a small coat closet. Meanwhile, the dimensions of the garage will be 24 feet by 22 feet.
12. The Board found that Mr. Wilkinson testified that the garage is smaller than the industry recommended size for a two (2) car garage but the size will allow them just enough space to store two (2) or their four (4) cars and their bicycles and, hopefully, his tools.
13. The Board found that Mr. Wilkinson testified that the Applicants purchased the home as it is. He noted that the home was built in the late 1980s and consists of less than 1,300 square feet and needs some updates.
14. The Board found that Mr. Wilkinson testified that they will be removing the deck off of the rear of the house and replacing it with a new deck and sunroom but that renovation does not require variances.
15. The Board found that Mr. Wilkinson testified that the 5.8 feet addition off the side of the house is for expansion of living space.
16. The Board found that Mr. Wilkinson testified that the Applicants realized last year the square footage of the home is a little small for their use and, rather than adding a second story (because of the future stair use), they decided to add on to the first floor living area.
17. The Board found that Mr. Wilkinson testified that they are adding a loft bedroom because they have three (3) sons and his wife wanted to make sure that they have three (3) additional bedrooms to accommodate their sons should they all visit at once.
18. The Board found that Mr. Wilkinson testified that the additional 5.8 feet will be an extension of the common living area which will have an open concept floor plan.
19. The Board found that Mr. Wilkinson testified that they will also be remodeling the kitchen and looking to expand their laundry area, living space, bedroom, and bathrooms.
20. The Board found that Mr. Wilkinson testified that they are rotating their front entry way because of wind related issues and the constant replacement of front / storm door related items. He noted that the prevailing wind has posed a problem for them and that the direction the home faces currently receives a higher amount of wind and rain.
21. The Board found that Mr. Wilkinson testified that they will seek homeowner association approval upon the decision of this Board.
22. The Board found that Mr. Wilkinson testified that there is about 10-15 feet between their front property line and the edge of paving of Bay Run.
23. The Board found that Mr. Wilkinson testified that all exterior projections are accounted for in the request for variances.
24. The Board found that Mr. Wilkinson testified that they did not look at placing their garage on the other side of the house as that is where the current entryway is located.
25. The Board found that Mr. Wilkinson testified that the rear of the Property is adjacent to the canal and that they get a good deal of shade in the rear yard and enjoy spending a lot of time out there.

26. The Board found that Mr. Wilkinson testified that the neighbors to the south received a variance last year to extend their garage and that other neighbors on East Stoney Run have received variances also.
27. The Board found that Mr. Wilkinson testified that the south side of the dwelling is proposed to have two (2) bedrooms and the entry way and the left side of the house is bedrooms.
28. The Board found that Mr. Wilkinson testified that the proposed garage will have an entry into the home to the main living area rather than a bedroom.
29. The Board found that Mr. Wilkinson testified that, as they move into retirement and are living there full-time, they will need all of this living space.
30. The Board found that Ms. Wilkinson testified that the addition is for when their three (3) sons come to visit at the same time.
31. The Board found that Ms. Wilkinson testified that they spoke with the property owners to the south first as they would be the most directly affected and that none of the neighbors had an issue with what they are proposing.
32. The Board found that Ms. Wilkinson testified that where the proposed addition is located adjacent to the bedrooms of the dwelling and that the proposed addition is to their living area.
33. The Board found that Ms. Wilkinson testified that the variances granted were for garages and that there are a few variances approved on their road.
34. The Board found that Ms. Wilkinson testified that, when you enter the proposed entryway, you will be entering into living space. She noted that their present living space is very small.
35. The Board found that Greg Warrington was sworn in to give testimony in support of the Application.
36. The Board found that Mr. Warrington testified that his property is located to the north of the Wilkinsons' property and that he has no objection to the Application.
37. The Board found that one person appeared by phone in support of and no one appeared in opposition to the Application.
38. 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, with conditions, met the standards for granting a variance. The findings below further support the Board's decision to approve the Application with conditions.
  - a. The Property is unique due to its size, shape, and development. The Property is improved with a dwelling and the Applicants seeks to construct a reasonable addition to the dwelling and a 2 car garage thereto. The lot is shaped similar to a parallelogram and is only 82 feet wide. The lot lines are angled away from the road at a severe angle as well. The Applicants are limited in their ability to develop the Property because these conditions. Moreover, the addition will be used for a garage to park vehicles and the driveway is located to near the proposed garage. Due to the design of the house, the location of the proposed garage is the only sensible area where it can be located so as to provide practical access to the home. These unique characteristics of this Property have created a limited building envelope and have created an unnecessary hardship and exceptional practical difficulty for the Applicants who seek to place an addition and a reasonable garage on the site.
  - 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 unique physical characteristics and the buildable area thereof is limited due to those characteristics. The Applicants seek to place an addition to the

dwelling and a garage on the lot 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 this reasonably sized addition and garage to be placed the lot. 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 addition will provide more functional living space while the garage will allow the Applicants to store vehicles, bikes, and tools.

- 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. Furthermore, the Applicants are constrained by the location of the existing dwelling and driveway.
- 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 will be located near the dwelling and driveway and there was no substantial evidence that the garage would somehow alter the essential character of the neighborhood. The addition to the side of the home will also provide the Applicants with more functional living space while minimizing the encroachment into the side yard. The Board notes that no letters in opposition or testimony in opposition were presented to the Board. Rather, letters of support from neighbors were submitted. The Board also notes that there is a large gap between the front property line and the edge of paving of Bay Run.
- 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 place the reasonably sized structures on the Property. The Board is convinced that the Applicants explored other options for the size, shape, and location of the structures but were constrained by the conditions of the lot and the design and location of the existing dwelling.
- 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 structures 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 Mr. Jeffrey Chorman, Mr. Jordan Warfel, and Mr. John Williamson. No Board Member voted against the Motion to approve the variance application with conditions. Dr. Kevin Carson and Mr. Travis Hastings did not participate in the discussion or vote on this application.

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 September 12, 2022