

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

**IN RE: TERRY GRAY**

**(Case No. 12725)**

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 side yard setback requirement for a proposed garage.

Findings of Fact

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

1. A variance of 8.1 feet from the fifteen (15) feet side yard setback requirement on the east side for a proposed attached garage; and
2. A variance of 8.3 feet from the fifteen (15) feet side yard setback requirement on the east side for a proposed attached garage.

This property is located on the east side of Fisherman Drive within the Coolspring Manor subdivision (911 Address: 28331 Boater Place, Milton) said property being identified as Sussex County Tax Map Parcel Number 334-10.00-228.00 ("the Property"). After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a setback information request form, a survey of the Property dated October 29, 2021, a drawing of the addition, correspondence supporting 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 seven (7) letters in support of the Application and no correspondence in opposition to the Application.
3. The Board found that Terry Gray was sworn in to testify about the Application.
4. The Board found that Mr. Gray testified that he purchased the Property a year ago and the Property did not have a garage when he purchased it but there are houses in the neighborhood that have garages.
5. The Board found that Mr. Gray testified that his prior home had a two-car garage and he wants to mirror that garage on this lot.
6. The Board found that Mr. Gray testified that he has a full size F250 pickup, a full-size older style Bronco, and a Mazda 626 and plans to store them in the garage.
7. The Board found that Mr. Gray testified that he looked at a bunch of different scenarios for placing a garage on the Property.
8. The Board found that Mr. Gray testified that, on the west side of his home, are the bedrooms, the septic system with drain field, HVAC unit, and propane tank and that, off the back of the house, is a deck and small porch. As such, he believes that the proposed location was the best option for the garage.
9. The Board found that Mr. Gray testified that he is proposing a two-car garage for storage of his vehicles. He noted that he travels to Florida and would like to keep his vehicles secure when he travels.
10. The Board found that Mr. Gray testified that house is set to one side of the Property and is not centered on the lot. He noted that the house is a Nanticoke Home and when placed on the foundation it is not square.
11. The Board found that Mr. Gray testified that where the garage will be placed is the best option to for entry into the home and that he could not place the garage in another location.

12. The Board found that Mr. Gray testified that the proposed garage is consistent with the other garages in the neighborhood; which is a small development of about 30-40 houses. He noted that most other lots in the neighborhood have traditional two car garages.
13. The Board found that Mr. Gray testified that the shed is going to be moved to the back of the Property and that the shed in the rear of the Property has been removed.
14. The Board found that Mr. Gray testified that the propane tank is buried.
15. The Board found that Mr. Gray testified that the septic is located in the northwest portion of the building envelope.
16. The Board found that Mr. Gray testified that all of the neighbors and his homeowners association support the request.
17. The Board found that Mr. Gray testified that he did not think of doing a one-car garage because he would have to make it much longer to accommodate his vehicles. He also thought about the aesthetics of the neighborhood and that the majority of homes have a two-car garage.
18. The Board found that Mr. Gray testified that the driveway is off Boater Place.
19. The Board found that Mr. Gray testified that there will be no projections off the garage into the setback area.
20. The Board found that no one appeared in support of or in opposition to the Application.
21. 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 for the variances met the standards for granting a variance. The findings below further support the Board's decision to approve the Application for the variances.
  - a. The Property is unique due to its size, shape, and development. The Property is improved with a dwelling and sheds the Applicant seeks to construct a 2 car garage thereto. The lot is a corner lot and the house is not centered on the lot. In fact, the house is located close to the eastern property line and the driveway is located on that side of the Property off Boater Place. As such, there is limited area where the garage can reasonably be located. Moreover, the Property is improved by a septic system and buried propane tank which are located in the building envelope. Due to the design and location 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 and to Boater Place. These unique characteristics of this Property have created a limited building envelope and have created an unnecessary hardship and exceptional practical difficulty for the Applicant who seeks to place 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 Applicant seeks to place a garage on the lot but is 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 garage to be placed the lot. The Board is convinced that the shape and location of the garage are also reasonable, which is confirmed when reviewing the survey provided by the Applicant. The Board notes that the garage will allow the Applicant to store his vehicles; which is important because the Applicant travels.

- d. The unnecessary hardship and exceptional practical difficulty were not created by the Applicant. 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 Applicant is 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 garage 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 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 noted that the testimony indicates that there are other two-car garages in the neighborhood.
- 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 Applicant has demonstrated that the variances sought will allow the Applicant to place the reasonably sized garage on the Property near the existing driveway. The Board is convinced that the Applicant explored other options for the size, shape, and location of the garage but was constrained by the conditions of the lot and the design and location of the existing dwelling and the driveway.
- 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 the variance were Mr. Jeffrey Chorman, Mr. Jordan Warfel, and Mr. John Williamson. No Board Member voted against the Motion to approve the variance application. 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