

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: NORMAN GRUWELL

(Case No. 12749)

A hearing was held after due notice on October 17, 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 a variance for the rear yard setback requirement for a proposed detached garage.

Findings of Fact

The Board found that the Applicant is requesting a variance of 15 feet from the twenty (20) feet rear yard setback requirement for a proposed detached garage. This application pertains to certain real property located on the northeast side of Woodland Avenue approximately 110 feet from 1st Street (911 Address: 34031 Woodland Avenue, Lewes) said property being identified as Sussex County Tax Map Parcel 335-8.18-24.02 ("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, minutes of the Board meeting on July 6, 2009 regarding Case No. 10431, a survey of the Property dated July 30, 2009, photographs, drawings, and a letter in support of the Application.
2. The Board found that the Office of Planning & Zoning received one letter in support of and no correspondence in opposition to the Application.
3. The Board found that Norman Gruwell was sworn in to testify about the Application. William Schab, Esquire, presented the case on behalf of the Applicant.
4. The Board found that Mr. Schab stated that Mr. Gruwell bought the Property in 2011 from Anna Shaffer.
5. The Board found that Mr. Schab stated that, originally, the Property was "L" shaped and included the parcel next to it and included three (3) dwellings but Ms. Shaffer obtained a variance to create Parcel 24.02 on July 6, 2009.
6. The Board found that Mr. Schab stated that everything about the Property is nonconforming.
7. The Board found that Mr. Schab stated that the Applicant needs the variance because of a pole with a guide wire. He noted that the pole holds transmission lines and Mr. Gruwell contacted Delaware Electric Coop to inquire about the pole but nothing can be done and the Coop requires that the pole remain in its current location.
8. The Board found that Mr. Schab stated that the Property consists of rentals, one dwelling, and a duplex and that Mr. Gruwell wants to add a garage.
9. The Board found that Mr. Schab stated that Mr. Gruwell obtained a permit for the garage and the contractor, upon looking at the plans and property, noticed the issue with placement and the wire off the pole.
10. The Board found that Mr. Schab stated that, with the turning radius of the garage and the location of the pole, it is not feasible to place the garage without the variance.
11. The Board found that Mr. Schab stated that the Applicant proposes to place the garage 5 feet off the rear property line.
12. The Board found that Mr. Schab stated that the property to the rear is also owned by Ms. Shaffer, who is 100 years old, and that Ms. Shaffer's relatives live adjacent to the Property also. He noted that Mr. Gruwell received a letter of support from the neighbors most directly affected.

13. The Board found that Mr. Schab stated that there are wetlands on the property to the rear and is unlikely to be developed.
14. The Board found that Mr. Schab stated that the guy wire sticks too far out into the back yard for Mr. Gruwell to be able to access the garage with vehicles. He noted that the wire extends 14 feet from the pole.
15. The Board found that Mr. Schab stated that he has never dealt with a property that has a pole with wire in the back yard like this and it speaks to the uniqueness.
16. The Board found that Mr. Schab stated that the practical difficulty is not created by Mr. Gruwell.
17. The Board found that Mr. Schab stated that Mr. Gruwell has tried to move the garage in other locations.
18. The Board found that Mr. Schab stated that the Applicant plans to use the existing driveway.
19. The Board found that Mr. Schab stated that, regardless of the size of the garage, the proposed location is where it would need to be located and the issue of the wire would remain. He noted that, even if the garage was turned 90 degrees, a variance would still be needed.
20. The Board found that Mr. Schab stated that the pole and wire were there when the Property was purchased.
21. The Board found that Mr. Schab stated that the variance is the minimum variance requested to afford relief.
22. The Board found that Mr. Schab stated that the turning area required for a boat and trailer is not available due to the pole and wire's location if the garage was to meet the setbacks. He noted that the boat would be backed into the garage.
23. The Board found that Mr. Schab stated that the request has no adverse consequences to neighboring properties.
24. The Board found that Mr. Schab stated that that the Property is unique, the variance requested is the minimum to afford relief, and the variance will have no adverse effect on neighboring properties.
25. The Board found that Mr. Gruwell testified that the normal setback for the rear property line is 20 feet and the size to put a car in the garage is 30 feet.
26. The Board found that Mr. Gruwell testified that, with the wire in the way, you cannot back a car into the garage or back a boat in.
27. The Board found that Mr. Gruwell testified that Mr. Schab was accurate in stating that Delaware Electric Coop was called and that the pole must stay.
28. The Board found that Mr. Gruwell testified that, to align the garage with the existing driveway, the garage needs to be placed on the southeast side of the Property. He noted that it is more logical to place the building to align with the driveway with the garage doors facing the roadway.
29. The Board found that Mr. Gruwell testified that the garage will measure 45 feet by 30 feet and that a normal garage is 30 feet deep.
30. The Board found that Mr. Gruwell testified that he has a classic car, a truck, a boat, and a lot of stuff that will be going in the garage.
31. The Board found that Mr. Gruwell testified that there is marshland behind him that cannot be built upon.
32. The Board found that Mr. Gruwell testified that the logical location of the proposal seems to be better than in the middle of the lot and obstructing the view of the Property.
33. The Board found that Mr. Gruwell testified that the original proposal was 24 feet from the guy wire but it was not reasonable to be able to put a boat and trailer into the garage.
34. The Board found that Mr. Gruwell testified that there are three (3) driveways on the Property.
35. The Board found that Mr. Gruwell testified that the statements made by Mr. Schab

are true and correct.

36. The Board found that no one appeared in support of or in opposition to the Application.
37. 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 in its historical development and the location of an electric pole and guy wire. The Property was developed by structures which predated the enactment of the Sussex County Zoning Code and the Property is also encumbered by an electric pole and guy wire. The electric pole and guy wire are located near the middle of the lot to the rear of a dwelling. The location of these improvements greatly limits where a garage can be located. The garage is designed to be used for car and boat storage but the location of the existing improvements, particularly the electric pole and guy wire, limit where a garage can be functionally located because a reasonable turning radius is needed to access the garage. These conditions have created a limited building envelope and the Board finds that the lot's unique conditions have created an unnecessary hardship and exceptional practical difficulty for the Applicant who seek to construct a reasonably sized 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 has a unique and limited buildable area. The Applicant seeks to construct a reasonable garage but is 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 garage to be constructed on the Property. 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 garage will allow the Applicant to store his boat, car, and other belongings. The Applicant was constrained as to where the garage could be located due to the unique conditions of the lot and the need to have room on the Property to turn around a boat and car to access the garage.
 - 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. The Board also notes that, due to the unique conditions of the lot, there appears no other place where the garage 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 garage will have no effect on the character of the neighborhood. The garage located near the rear of the Property and lands adjacent to the rear of the Property are wetlands. The Board notes that there was no evidence submitted into the record that the garage will somehow alter the essential character of the neighborhood. The Board also notes that neighbors have submitted a letter supporting the request.

- 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 Applicant has demonstrated that the variance will allow the Applicant to place the reasonably sized garage on the Property. 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 need to have access to the garage.
- 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, and Mr. Travis Hastings. Mr. Jordan Warfel and Mr. John Williamson voted against the Motion to approve the variance 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 December 19, 2022.