

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: HERBERT REYNOLDS

(Case No. 12752)

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 variances from the side yard setback, lot coverage, and separation distance requirements for a proposed detached garage.

Findings of Fact

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

1. A variance of 3 feet from the five (5) feet side yard setback requirement on the west side for proposed garage;
2. A variance of 5.18 feet from the twenty (20) feet separation distance requirement between structures for a proposed garage from the existing dwelling on Lot 38;
3. A variance of 8.73% from the 35% maximum allowable lot coverage in a manufactured home park for a proposed garage.

This property is located on the north side of Jasper View Lane within the Masseys Landing manufactured home park (911 Address: 37269 Jasper View Lane, Millsboro) said property being identified as Sussex County Tax Map Parcel Number 234-25.00-31.00-8874 ("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 April 18, 2022, Findings of Fact for Case No. 12676, the application and materials for Case No. 12676, aerial photographs 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 notes that the Board previously denied variances for the Property in Case No. 12676 and that, before proceeding with a hearing on the merits, the Applicant must demonstrate that there has been a substantial change in the change of conditions or other conditions or in the proposed use or plans for use which materially affect the merits of the request.
4. The Board found that Norman Reynolds was sworn in to testify about the Application. Blake Carey, Esquire, appeared on behalf of the Applicant.
5. The Board found that Mr. Carey stated that the Application has a substantial change to the proposed plans as shown in the packet. He noted that the previous variance request included a proposed garage that was on the rear, front, and side yard lot lines but the new proposal locates the garage roughly 2 feet away from the side yard lot line and complies with the setbacks for the front and rear lot lines. He also noted that the new request also changes the percentage of impervious surface and the distance from the existing dwelling to the west.
6. The Board found that Mr. Carey stated that, based on those reasons, their position is that this is a substantial change to the request.
7. The Board found that Mr. Carey stated that the Applicant is seeking a variance to construct a garage to store his classic cars.
8. The Board found that Mr. Carey stated that the Property is now the Applicant's permanent residence.

9. The Board found that Mr. Carey stated that the Property is unique because of the placement of a telephone pole in the front center of the Property and there is also a pumping station and a shed. He noted that the structures in the front yard and the dwelling were all existing when Mr. Reynolds purchased the Property.
10. The Board found that Mr. Carey stated that another unique quality to the Property is that the entrance to the dwelling is on the rear.
11. The Board found that Mr. Carey stated that the side yard is the only proposed location on the Property for a garage and the request is to place an 18' x 54' garage on the westerly side of the Property. He noted that, on the easterly side of the Property, there are propane tanks and the HVAC system which were also existing when the Property was purchased.
12. The Board found that Mr. Carey stated that, on the western side of the Property, they have to maintain some space between the house and garage for emergency personnel to access the dwelling if there was ever a need.
13. The Board found that Mr. Carey stated that, if they are not able to access through the rear, they would have to reconfigure the layout of the entire home which would be a substantial burden on the Applicant.
14. The Board found that Mr. Carey stated that this garage would allow cars to drive all the way back and will utilize a two (2) post lift system.
15. The Board found that Mr. Carey stated that the minimum request here would allow for the two (2) post lift system to be in place to store several classic cars in the garage.
16. The Board found that Mr. Carey stated that the 18' x 54' garage is the minimum necessary to accommodate the lift system and allow for safety systems.
17. The Board found that Mr. Carey stated that the Property was purchased with the home and improvements as they exist presently.
18. The Board found that Mr. Carey stated that the exceptional practical difficulty was not created by the Applicant.
19. The Board found that Mr. Carey stated that these are cars that the Applicant has owned prior to purchasing the Property and needs to be able to store them.
20. The Board found that Mr. Carey stated that there are several homes in the neighborhood that have accessory structures.
21. The Board found that Mr. Carey stated that the only other place on the Property to put a structure of this size would be across the front yard and would leave a view of the Property as the garage and potentially inhibit use of the Property.
22. The Board found that Mr. Carey stated that the shed will be relocated within the setbacks.
23. The Board found that Mr. Carey stated that the neighborhood and most directly affected neighbor have indicated there is no issue with the request.
24. The Board found that Mr. Carey stated that, with the garage being moved, the view of the neighbor is improved.
25. The Board found that Mr. Carey stated that you will be able to access the garage on all sides while remaining on the Property and there will be a gutter system on the garage to deter water from going to the neighbor's property. He noted that there will be no overhang of the structure over the property line.
26. The Board found that Mr. Carey stated that the garage will be at or under two (2) stories and cannot be over 25 feet tall.
27. The Board found that Mr. Carey stated that the Applicant does not oppose a condition that the shed must be placed within the setbacks if it is moved.
28. The Board found that Mr. Reynolds testified that all of the statements made by Mr. Carey are true and correct.
29. The Board found that Mr. Reynolds testified that he weighed what he wanted versus what he needs.
30. The Board found that Mr. Reynolds testified that the garage will be a single-story garage and there will be no attic or crawl space in the garage.

31. The Board found that Mr. Reynolds testified that the garage cannot be attached to the house because of the location of the entrance.
32. The Board found that Mr. Reynolds testified that he will be removing the steps and creating a walkway and he will be moving the steps to be off the rear of the house rather than the side as they are currently.
33. The Board found that Mr. Reynolds testified that the garage is for the storage of his own personal vehicles. He noted that he has worked on cars his whole life and his hands are too shaky to do the work he likes to do so he is now working on his vehicles minimally.
34. The Board found that Mr. Reynolds testified that the Property is leased land and Massey's Landing is the landlord. He noted that Massey's Landing has no objection to the proposal and the most affected neighbor has no objection either.
35. The Board found that Mr. Reynolds testified that he will be relocating one of the sheds on the Property to be within the setbacks.
36. The Board found that Mr. Reynolds testified that the bulkhead does not match the property line but there is enough room behind the house to place the shed.
37. The Board found that Mr. Reynolds testified that the pump at the front of his house is for the benefit of the community and he is unsure if the pump is included in the calculation for impervious surface.
38. The Board found that no one appeared in support of or in opposition to the Application.
39. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, which the Board weighed and considered, the Board determined that there has been a substantial change of conditions or other conditions or in the proposed use or plans for use which materially affect the merits of the request.
 - a. The Board previously denied an application for a variance of 5 feet from the 5 feet front yard setback requirement, a variance of 5 feet from the 5 feet side yard setback requirement, a variance of 5 feet from the 5 feet rear yard setback requirement, a variance of 7.18 feet from the 20 feet separation distance requirement, and a variance of 13% from the 35% lot coverage requirement. See the Board's decision in Case No. 12676.
 - b. Since that decision was rendered, the Applicant has amended his plans and significantly reduced the size of the proposed garage. The garage will now meet the front and rear yard setback requirements and the variances needed from the side yard, separation distance, and lot coverage requirements are also substantially reduced.
 - c. While the Applicant now proposes variances, it is clear that the plans proposed by the Applicant are substantially different from the original application.
 - d. These findings confirm that there has been a substantial change in conditions affecting the property and that there has been a substantial change in the proposed use or plans for the use.
40. 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 shed the Applicant seeks to construct a garage thereto. The lot is improved by a pump house that serves the community and limits areas where the lot can reasonably be developed. The Applicant is also limited by the existing layout of the dwelling which requires access thereto. As such, there is limited area where

the garage can reasonably be located. 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 Jasper View Lane. 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 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 has a long history of working vehicles and would like to continue doing so.
- 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, the testimony indicates that neighbors and the landlord support the request. The Board also noted that the testimony indicates that there are other 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.
- h. The Board's approval is conditioned on the Applicant relocating the existing shed within the setback requirements.

The Board granted the variance application with condition finding that it met the standards for granting a variance.

Decision of the Board

Upon motion duly made and seconded, Board determined that there has been a substantial change of conditions or other conditions or in the proposed use or plans for use which materially affect the merits of the request. The Board Members in favor of the Motion to allow the Application to proceed 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 allow the Application to proceed to a hearing.

Upon motion duly made and seconded, the variance application was approved with condition. The Board Members in favor of the Motion to approve the variance with condition were Dr. Kevin Carson, Mr. Travis Hastings, Mr. Jordan Warfel, and Mr. John Williamson. Mr. Jeffrey Chorman 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.