

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

**IN RE: MEGAN AVALOS & ROMMEL AVALOS-FLORES**

**(Case No. 12755)**

A hearing was held after due notice on November 7, 2022. The Board members present were: Dr. Kevin Carson, Mr. Jeffrey Chorman, Mr. John T. Hastings, Mr. Jordan Warfel, and Mr. John Williamson. A second hearing was held after due notice on November 21, 2022. The Board members present were: Dr. Kevin Carson, Mr. Jeffrey Chorman, and Mr. Jordan Warfel.

Nature of the Proceedings

This is an application for variances from the side yard and rear yard setback requirements for a proposed structure.

Findings of Fact

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

1. A variance of 15 feet from the twenty (20) feet rear yard setback requirement for a proposed garage
2. A variance of 10 feet from the fifteen (15) feet side yard setback requirement on the north side for a proposed garage

This application pertains to certain real property located on the east side of Sand Hill Road approximately 0.39 miles from Huff Road (911 Address: 18265 Sand Hill Road, Georgetown) said property being identified as Sussex County Tax Map Parcel Number 135-7.00-13.02 ("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, a site plan of the Property dated February 11, 2021, and a letter from Maria Folke.
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 Megan Avalos was sworn in to testify about the Application.
4. The Board found that Ms. Avalos testified that the Applicants seeks variances to build a detached garage on the Property.
5. The Board found that Ms. Avalos testified that that the Applicants currently have a 6 foot tall fence around the Property.
6. The Board found that Ms. Avalos testified that the Applicants have four (4) children, two (2) who are teenagers and two (2) who are younger. She noted that wants the house to be where her children want to be at and have their friends come over and that the family has future plans to install a pool, firepit, and a volleyball court.
7. The Board found that Ms. Avalos testified that the Applicants propose to place the detached garage in the northeast corner of the Property.
8. The Board found that Ms. Avalos testified that the Property is adjacent to a driveway and farm road used by her family. She noted that her mother owns the property surrounding her.
9. The Board found that Ms. Avalos testified that the structure behind her house is the dog house.
10. The Board found that Ms. Avalos testified that the reason the garage cannot go in the other corner of the backyard is because of the location of the septic system. She noted that the septic system runs north-to-south on the Property.



11. The Board found that Ms. Avalos testified that the Applicants built this house in 2018.
12. The Board found that Ms. Avalos testified that there is a double door in the fence along the Property that will grant them access to the proposed detached garage. She noted that that Applicants would not be accessing the detached garage daily and her husband's truck would not be parked in it.
13. The Board found that Ms. Maria Folke was sworn in to give testimony in support of the Application.
14. The Board found that Ms. Folke testified that the roads along the Property are their driveway and a farm lane and that there are no concerns for visibility. She noted that her family owns all of the land around the Property and that she lives nearby.
15. The Board found that one person appeared in support of and no one appeared in opposition to the Application.
16. After the hearing on November 7, 2022, the Board left the record open and set a second hearing on November 21, 2022.
17. The Board held a second hearing on November 21, 2022, at which time Rommel Avalos-Flores and Megan Avalos were sworn in to testify about the Application.
18. The Board found that Mr. Avalos-Flores testified that the proposed garage being requested measures 32 feet by 26 feet in size.
19. The Board found that Mr. Avalos-Flores testified that the Applicants built their house four (4) years ago.
20. The Board found that Mr. Avalos-Flores testified that the Applicants have four (4) children and the Applicants want to build a pool and volleyball court in the future. He noted that his children are involved in sports.
21. The Board found that Mr. Avalos-Flores testified that the septic system is on the south side of the lot.
22. The Board found that Mr. Avalos-Flores testified that the reason the garage is so large in size is to accommodate their four (4) children and the equipment associated with each sport.
23. The Board found that Mr. Avalos-Flores testified that the location of the garage is due to the plan the Applicants have for their backyard in the near future as the Applicants plan on adding a pool and a full-size volleyball court.
24. The Board found that Mr. Avalos-Flores testified that the whole backyard is fenced in with a gate in the corner proposed for the garage.
25. The Board found that Mr. Avalos-Flores testified that the proposed building will not be to used to run his HVAC business.
26. The Board found that Mr. Avalos-Flores testified that the Applicants have a lot of belongings and a garage measuring 32 feet by 26 feet will work best for them.
27. The Board found that Mr. Avalos-Flores testified that the proposal is to preserve space in the backyard and to keep it out of the way for the children.
28. The Board found that Mr. Avalos-Flores testified that the gate is located along the northeast corner of the Property.
29. The Board found that Ms. Avalos testified that her mother and father own the property around their lot. She noted that her parents live in the wooded area nearby and that they own greenhouses to the south of the Property and that her aunt and uncle live to the north of the Property.
30. The Board found that Ms. Avalos testified that the septic system runs north-to-south in the southeast corner of the Property.
31. The Board found that Ms. Avalos testified that the Applicants will not need an additional entrance for the use of the garage because the lane on the north side of the Property belongs to her parents and have granted them access to use it.
32. The Board found that Ms. Avalos testified that the propane tank is located along the north side of the house outside of the fenced in area.



33. The Board found that Ms. Avalos testified that there is a doghouse, trampoline, and playground also in the backyard.
34. The Board found that Ms. Avalos testified that the well is located in the front yard in the north corner.
35. The Board found that, at the second hearing, no one appeared in support of or in opposition to the Application.
36. 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 due to the location of the septic system and driveway. The Applicants propose to construct a garage measuring 32 feet by 26 feet in the northeast corner of the lot. The garage will be accessed from an existing driveway that runs along the north side and the rear of the Property. Given the proximity of the proposed garage to the existing driveway, this proposed location makes sense. The Property is developed by a septic system in the rear of the lot which limits the area where the garage can reasonably be located. These conditions have created an unnecessary hardship and exceptional practical difficulty for the Applicants who seek to place a reasonably sized 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 construct 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 garage to be placed on the lot. The Board is convinced that the shape and location of the structure is also reasonable, which is confirmed when reviewing the survey provided by the Applicants. The Board notes that the location of the driveway and septic system limit where the garage could be located. The garage also needs to be of a certain size to accommodate the Applicants' large family.
  - 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.
  - 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 allow the Applicants to reasonably store their belongings; particularly equipment related to their children's activities. The testimony reflects that the nearby lands are owned by the Applicants' family who support the request. No evidence was presented which demonstrates that the variances would somehow alter the essential character of 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 Applicants have demonstrated that the

variances sought will allow the Applicants to construct a reasonably sized garage on the Property.

- 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. Jordan Warfel. No Board Member voted against the Motion to approve the variance application. Mr. Travis Hastings and Mr. John Williamson 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 January 23, 2023.