

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: GARY KELBAUGH

(Case No. 12757)

A public 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.

Nature of the Proceedings

This is an application for variances from the front yard setback requirement for an existing structure.

Findings of Fact

The Board found that the Applicant is requesting a variance of 9.4 feet from the forty (40) feet front yard setback requirement for an existing detached garage. This application pertains to certain real property located on the south side of Staytonville Road approximately 0.27 miles from Memory Road (911 Address: 12718 Staytonville Road, Harrington); said property being identified as Sussex County Tax Map Parcel Number 430-1.00-9.00 ("the Property"). After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, aerial photographs of the Property, a drawing of the Property, a survey dated August 2, 2022, photographs, 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 found that Gary Kelbaugh sworn in to give testimony about the Application.
4. The Board found that Mr. Kelbaugh testified that he is seeking a variance for a pavilion structure that was built on the Property by a local contractor who was responsible for obtaining the permits. He noted that the contractor was on site several times and never questioned where he wanted to place the structure and the contractor constructed the building on May 21, 2022, while he was away.
5. The Board found that Mr. Kelbaugh testified that, about three and a half weeks later, he talked to a customer representative for the contractor while waiting for a final inspection and that, at that time, he was told the footer inspection passed but that he needed to obtain a survey.
6. The Board found that Mr. Kelbaugh testified that he got the plot that was originally provided to company and he went to the house and measured to the rear property line. He noted that the property line goes halfway into the ditch behind his house.
7. The Board found that Mr. Kelbaugh testified that the survey was accepted by both the contractor and the permit office.
8. The Board found that Mr. Kelbaugh testified that the structure is on the east side of the Property and was placed in that location because the doors to the house and the garage are on that side of the house making it easier to access the structure on that side. He noted that the electric panel is on that side also and will make it easier to run electric to the structure in the future.
9. The Board found that Mr. Kelbaugh testified that, if the structure was located farther back, he would have had to clear out adult trees.
10. The Board found that Mr. Kelbaugh testified that he had the structured placed closer to the road to house his RVs and make it easier to get them in and out. He also

noted that it was not cost efficient to place the structure farther back because of the cost to extend his driveway.

11. The Board found that Mr. Kelbaugh testified that, on the other side of the house, is a septic hill which eliminates his use of that side of the Property.
12. The Board found that Mr. Kelbaugh testified that he feels that the contractor signed for the permit and built the structure and should have constructed it in line with the County Code and that he is requesting a variance for where it has already been constructed.
13. The Board found that Mr. Kelbaugh testified that the pavilion is located 45 feet back from the pavement of Staytonville Road and that there is a 15 foot right-of-way between the Property and the road.
14. The Board found that Mr. Kelbaugh testified that there are also existing utility poles that limited his buildable area.
15. The Board found that Mr. Kelbaugh testified that the structure will be used to park his RVs. He noted that the RVs will not create a visual block when placed in the structure.
16. The Board found that Mr. Kelbaugh testified that the contractor never requested a site plan or survey but they had a site evaluator come to make sure that the location was level.
17. The Board found that Mr. Kelbaugh testified that he has received no complaints about the location of the structure and that the structure appears to be in line with a neighbor's house.
18. The Board found that Mr. Kelbaugh testified that this issue arose after the building was complete and that he does not understand why he was not called by the inspector at the time an issue was found.
19. The Board found that no one appeared in support of or in opposition to the Application.
20. 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 its odd shape. The lot is wide but not deep. The Property is also improved by a septic system which limits the buildable area. Furthermore, the rear of the Property consists of part of a ditch. The Property also consists of mature trees. The lot's unique conditions limit the buildable area available to the Applicant and have created an unnecessary hardship and an exceptional practical difficulty for the Applicant who seeks to retain a storage building on the lot. The storage building affords the Applicant with functional space and access to Staytonville Road from an existing driveway.
 - 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 conditions and the buildable area thereof is limited due to the conditions of the lot. The Applicant seeks to retain a storage building 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 reasonably sized storage building to remain on the Property. The Board is convinced that the shape and location of the storage building is also reasonable, which is confirmed when reviewing the survey provided by the Applicant. The Board notes that the storage building will be used for storage of the Applicant's RVs.

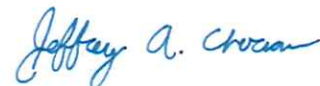
- d. The unnecessary hardship and exceptional practical difficulty were not created by the Applicant. As previously stated, the Property has unique conditions and these conditions have resulted in a limited building envelope on the Property. These conditions have created the unnecessary hardship and exceptional practical difficulty. The Applicant also relied on his contractor to build the structure in compliance with the Sussex County Zoning Code only to later discover the encroachment.
- 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 storage building will have no effect on the character of the neighborhood. The storage building has been on the lot since May 2022 and no complaints about its location were noted in the record. There was no evidence that the location of the storage building in the front yard setback area would somehow affect the neighborhood and no evidence was presented that the variance would somehow alter the essential character of the neighborhood or be detrimental to the public welfare. The Board also notes that the building is located off an existing driveway and is approximately 45 feet from the pavement of Staytonville Road.
- f. The variance sought is the minimum variance necessary to afford relief and the variance requested represents the least modification possible of the regulation at issue. The Applicant has demonstrated that the variance sought will allow the Applicant to retain a storage building on the Property. No additions or modifications to the structure are proposed.
- 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 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 approve the 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 9, 2023.