

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: DENNIS MORRIS & AMY MORRIS

(Case No. 12764)

A 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 detached garage.

Findings of Fact

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

1. A variance of 12 feet from the twenty (20) feet rear yard setback requirement for a proposed detached garage; and
2. A variance of 10 feet from the fifteen (15) feet side yard setback requirement on the north side for a proposed detached garage.

This application pertains to property that is a through lot located on the southeast side of Hollyville Road approximately 0.26 miles from Hurdle Ditch Road (911 Address: 23417 Hollyville Road, Harbeson); said property being identified as Sussex County Tax Map Parcel Number 234-16.00-1.05 (hereinafter "the Property"). After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, an aerial photograph of the Property, a survey of the Property dated December 10, 2002, a plan for Turnberry dated October 16, 2020, photographs, a building permit, inspection notes, drawings, letters in support of the Application, and a portion of the tax map of the area.
2. The Board found that the Office of Planning & Zoning received three (3) letters in support of and no correspondence in opposition to the Application.
3. The Board found that Dennis Morris and Amy Morris were sworn in to give testimony about the Application.
4. The Board found that Mr. Morris testified that the variance is for a proposed, three-car garage which will be used for storage of lawnmowers, equipment, and vehicles. He noted that the garage measures 24 feet by 36 feet.
5. The Board found that Mr. Morris testified that the Property consists of 0.75 acres and the driveway is positioned to the north side of their house.
6. The Board found that Mr. Morris testified that the north side yard is adjacent to a 50 foot wide strip that is part of the Turnberry subdivision. He noted that this strip will not be used for access or as a buildable area for the proposed development.
7. The Board found that Mr. Morris testified that the problem is that the offset of 15 feet from that strip would offset the driveway and the proposed garage location and would require an unusual access to the garage. The driveway is currently along the north side of the Property.
8. The Board found that Mr. Morris testified that the shed will be removed.
9. The Board found that Mr. Morris testified that construction started but they stopped before the footer was done even though the product has been ordered. The need for a variance was discovered when the Property was staked out.

10. The Board found that Mr. Morris testified that the Property has a septic system in the back yard on the south side of the lot.
11. The Board found that Mr. Morris testified that they have a two (2) car garage attached to the house.
12. The Board found that Mr. Morris testified that there is a tree that blocks them from physically going in and from placing the garage in compliance with the Code. He noted that the tree has sentimental value as it was planted for his daughter's birthday.
13. The Board found that Mr. Morris testified that there are some obstacles that have created this exceptional practical difficulty.
14. The Board found that Mr. Morris testified that the garage will be used to park their daughter's cars and their lawnmower and storage and that he would have to reduce the proposed garage down to a two (2) car or less as opposed to a shed. He noted that his shed right now is not big enough to accommodate their needs as the space they have now is filled.
15. The Board found that Mr. Morris testified that there are only three (3) houses around them and there is nothing behind them.
16. The Board found that Mr. Morris testified that building the garage in compliance with the Code would render it difficult to access because it would be too close to the house.
17. The Board found that Mr. Morris testified that the builder put them in this position and that, had the builder told them that the garage would not fit without the variances, the Applicants could have looked at something else. He noted that they already have the materials ordered for both the garage and windows and doors.
18. The Board found that Mr. Morris testified that he could work with the idea of granting the side yard variance and denying the rear yard variance because he could place the garage 20 feet off the rear property line; though, ideally, he would rather see more in front of his garage instead of behind it because that is dead space.
19. The Board found that Mr. Morris testified that the land to the rear of the Property is currently farmland.
20. The Board found that Ms. Morris testified that the property to the rear of the Property is a proposed development that has not yet been approved.
21. The Board found that Ms. Morris testified that there is a 50 feet wide space between their house and their neighbors to the north that is a part of the proposed development.
22. The Board found that Ms. Morris testified that, in the proposed plan for the development, they will not touch but this will be considered open area. Furthermore, according to Ms. Morris, along their rear property line, there will be a 30 feet buffer of trees to the back of them that will be installed before the development is completed.
23. The Board found that Ms. Morris testified that they relied on their builder and the builder obtained the permit in September.
24. The Board found that Ms. Morris testified that, when the masons came to stake out the Property, it was discovered that the variances are needed.
25. The Board found that Ms. Morris testified that she then contacted her husband who called the builder and told them about applying for the variances.
26. The Board found that Ms. Morris testified that the Applicants applied for the variances before continuing with any work.
27. The Board found that Ms. Morris testified that they have the paved driveway that sits next to the existing garage.
28. The Board found that Ms. Morris testified that they built this house in 2003.
29. The Board found that Ms. Morris testified that that, in order to have the new garage continue straight with their existing driveway, they would need the variance otherwise half of it would be almost sitting in the back of their yard.
30. The Board found that Ms. Morris testified that they sit back pretty far off Hollyville Road.

31. The Board found that Ms. Morris testified that the side yard variance is the most important.
32. The Board found that no one appeared in support of or in opposition to the Application.
33. 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 the application for the side yard variance met the standards for granting a variance. The findings below further support the Board's decision to approve the side yard variance for the garage.
 - 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 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. Furthermore, a tree is also located on the lot that limits the location of the garage closer to the center of the lot. 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 side yard variance is necessary to enable the reasonable use of the Property as the side yard variance 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, tree, and septic system limit where the garage could be located. The garage also needs to be of a certain size to accommodate the Applicants' 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 side yard 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 will allow the Applicants to reasonably store their belongings and vehicles. The testimony reflects that the nearby lands to the north is a strip of land that will be left as open space. No evidence was presented which demonstrates that the side yard variance would somehow alter the essential character of the neighborhood.
 - f. The side yard variance sought is the minimum variance necessary to afford relief and the side yard variance requested represents the least modification possible of the regulation at issue. The Applicants have demonstrated that the side yard variance sought will allow the Applicants to construct a

reasonably sized garage on the Property. The Applicants are otherwise limited in where the garage can be reasonably located.

- 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.

34. 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 the application for the rear yard variance for the garage failed to meet the standards for granting a variance. The findings below further support the Board's decision to deny the rear yard variance for the garage.

- a. The Applicants failed to demonstrate that the rear yard variance for the garage was needed and that the garage could not be placed in strict conformity with rear yard setback requirement. While the Applicants demonstrated unique conditions as it pertains to locating the garage to meet the side yard setback requirement, the Applicants failed to demonstrate that the garage could not be placed in strict compliance with the rear yard setback requirement. Rather, the Applicant testified that the garage could be placed in compliance with the rear yard setback requirement.
- b. As it pertains to the rear yard variance for the garage, the Board finds that the Applicants are creating their own exceptional practical difficulty by proposing to place the garage on the lot outside the building envelope in the rear of the lot. The Applicants' decision to place the garage in this location is the reason for the need for the rear yard variance and has nothing to do with the size, shape, or condition of the Property. While the lot has unique conditions, the Applicants failed demonstrate that the garage could not meet the rear yard setback requirement. Simply put, the Board was not convinced that the rear yard variance request for the garage was the product of a *need*. Instead, the rear yard variance request for the garage appears to be the product of a *want* as the Applicants seek to place the garage in this location for purposes of convenience, profit, and / or caprice. As it pertains to the rear yard variance for the garage, the Board finds that the Applicants have created their own exceptional practical difficulty.
- c. Since the rear yard variance for the garage is not necessary to enable the reasonable use of the Property, the Board also finds that the rear yard variance requested for the garage is not the minimum variance necessary to afford relief.

The Board granted the variance application from the side yard setback requirement for the garage finding that the variance application for the side yard variance met the standards for granting a variance and denied the rear yard variance application for the garage finding that the rear yard variance application for the garage did not meet the standards for granting a variance.

Decision of the Board

Upon motion duly made and seconded, the side yard variance application for the garage was approved and the rear yard variance request was denied. The Board Members in favor of the motion to approve the side yard variance for the garage and to deny the rear yard variance for the garage were: Dr. Kevin Carson, Mr. Jeffrey Chorman, and Mr. Jordan Warfel. No Board Member voted against the motion to approve the side yard variance request and to deny the rear yard variance request for the garage. 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.