

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: JOSHUA WILLIN

(Case No. 12423)

A hearing was held after due notice on March 16, 2020. The Board members present were: Dr. Kevin Carson, Mr. Jeff Chorman, Ms. Ellen Magee, Mr. John Williamson, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for a variance from the side yard setback requirement for a proposed structure.

Findings of Fact

The Board found that the Applicant is requesting a variance of 15 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 corner of Beagle Club Road and Vine Street directly across from Baileys Landing Drive (911 Address: 30127 Beagle Club Road, Bethel) said property being identified as Sussex County Tax Map Parcel Number 2-32-11.00-1.12. 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 March 19, 2019, letters supporting the Application, an aerial photograph of the Property, and a portion of the tax map of the area.
2. The Board found that the Office of Planning & Zoning received two (2) letters in support of and no correspondence in opposition to the Application.
3. The Board found that Joshua Willin was sworn in to testify about the Application.
4. The Board found that Mr. Willin testified that the Property is unique as it has a 100 foot sight easement by DeIDOT. Mr. Willin stated that he was unaware of this easement until he was far along in building his house. According to Mr. Willin, almost $\frac{3}{4}$ of the lot is unbuildable because of the easement.
5. The Board found that Mr. Willin testified that the property line is curved.
6. The Board found that Mr. Willin testified that the house had to be built farther back than he wished due to the easement and the building envelope for the Property is small due to the easement.
7. The Board found that Mr. Willin testified that he did not create the exceptional practical difficulty and that the sight easement has created the difficulty.
8. The Board found that Mr. Willin testified that there is nowhere else on the Property to place a garage as it would reduce the size of the backyard.
9. The Board found that Mr. Willin testified that the variance will not alter the essential character of the neighborhood as there are few homes in the area and those that are developed have garages. He noted that the area is generally rural.
10. The Board found that Mr. Willin testified that the dwelling uses well and septic. The septic is to the south of the house and the well is in the front yard.
11. The Board found that Mr. Willin testified that he intends to use the garage for a personal workshop and storage.
12. The Board found that Mr. Willin testified that it would be possible to move the garage off the property line so that the garage is not on the property line but he would still need a variance of 10 feet.
13. The Board found that Mr. Willin testified that he considered turning the garage but he felt that doing so would take up too much of the rear yard. He also noted that he previously had a garage which was turned but had difficulty using the garage due to its orientation.

14. The Board found that Glenell Hopkins was sworn in to give testimony in opposition to the Application. Mr. Hopkins opposed the Application on grounds that it would violate restrictive covenants but, after being explained the request in greater detail, he withdrew his opposition.
15. The Board found that Mr. Hopkins testified that the intersection is dangerous.
16. The Board found that no one appeared in support of and two people appeared in opposition to the Application and that no additional comments were submitted electronically.
17. 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 variance, as modified, met the standards for granting a variance. The findings below further support the Board's decision to approve the Application with modification for the variances for those structures.
 - a. The Property is unique due to its shape and sight easement. The Property has a unique shape as its property line is curved and the property is subject to a sight easement. As a result of these conditions, the building envelope is exceptionally limited. The Applicant seeks to construct a reasonably sized garage on the Property but is unable to do so due to the lot's unique conditions. These conditions have thus created an unnecessary hardship and exceptional practical difficulty for the Applicant who seeks to construct a 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 unique physical characteristics and the buildable area thereof is limited due to those characteristics. The Applicant seeks to construct a garage on the lot 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 the Applicant to construct a reasonably sized garage on 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 also notes that the garage is near the far corner away from the dangerous intersection noted by a neighbor.
 - d. The unnecessary hardship and exceptional practical difficulty were not created by the Applicant. The lot was created by a prior owner and the Applicant did not create the unusual conditions of the lot. The unique conditions of the lot are clear from the testimony and evidence in the record. The Board notes that the site easement and the unique conditions of the Property created an exceptionally limited building envelope and the unnecessary hardship and exceptional practical difficulty.
 - 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 proposed garage will have no effect on the character of the neighborhood. The record is clear that there are similar structures on nearby properties. No evidence was presented which convinced the Board that the variance would somehow alter the essential character of the neighborhood or be detrimental to the public welfare. The Board notes that multiple neighbors have indicated their support for the request.
 - f. The variance, as modified, is the minimum variance necessary to afford relief and the variance, as modified, represents the least modification

possible of the regulation at issue. The Applicant has demonstrated that the variance, as modified, will allow the Applicant to construct a reasonably sized garage on the lot. The Applicant has reduced his initial request so that the garage can be moved off the side property line. The Applicant considered turning the garage but, doing so, would make the garage difficult to access and would limit its usefulness to the Applicant.

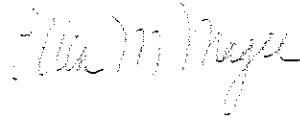
- g. The condition or situation of the Property and the intended use of the Property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the Sussex County Zoning Code.
- h. This approval is for a variance of 10 feet from the fifteen (15) feet side yard setback requirement on the north side for a proposed garage. This approval represents a modification from the variance originally sought by the Applicant.

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

Decision of the Board

Upon motion duly made and seconded, the variance application as modified was approved. The Board Members in favor of the Motion to approve the variance with modifications were Dr. Kevin Carson, Mr. Jeff Chorman, Ms. Ellen Magee, Mr. John Williamson, and Mr. Brent Workman. No Board Member voted against the Motion to approve the variance application with modification.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY



Ellen M. Magee
Chair

If the use is not established within two (2) years from the date below the application becomes void.

Date May 5, 2020.