

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

### **IN RE: JAMES MICHAEL HENRY (Case No. 11142)**

A hearing was held after due notice on January 28, 2013. The Board members present were: Mr. Dale Callaway, Mr. Jeff Hudson, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman.

#### Nature of the Proceedings

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

#### Findings of Fact

The Board found that the Applicant was seeking a variance of 1.1 feet from the 15 feet side yard setback requirement for an existing pole building. The Applicant has requested that the aforementioned requested variance be granted as it pertains to certain real property located south of Road 549 (Old Carriage Road) approximately 530 feet west of Road 80 (Woodpecker Road); said property being identified as Sussex County Tax Map Parcel Number 5-31-11.00-59.01. After a hearing, the Board made the following findings of fact:

1. James Henry was sworn in and testified on behalf of the Application.
2. The Board found that Mr. Henry testified that a pole building was constructed on the Property 8 years ago by Delmarva Pole Building.
3. The Board found that Mr. Henry testified that the pole building encroaches into the setback area.
4. The Board found that Mr. Henry testified that the front corner was staked for the location of the proposed pole building.
5. The Board found that Mr. Henry testified that the pole building was placed in a manner that is not parallel with the property line.
6. The Board found that Mr. Henry testified that the property line angles in towards the rear of the property and that the Property is an odd shape and is narrow.
7. The Board found that Mr. Henry testified that a Certificate of Compliance was issued for the pole building by the Planning & Zoning Department.
8. The Board found that Mr. Henry testified that recent trouble with his neighbor is how the encroachment was discovered.
9. The Board found that Mr. Henry testified that the difficulty was not created by the Applicant since he trusted the builder to comply with the setback requirements.
10. The Board found that Mr. Henry testified that the variance will not be detrimental to the public welfare.
11. The Board found that Mr. Henry testified that the variance is necessary to enable reasonable use of the Property.
12. The Board found that Mr. Henry testified that there are other pole buildings in the neighborhood so the pole building in question will not alter the character of the neighborhood.
13. The Board found that Mr. Henry testified that the adjacent property is vacant.
14. The Board found that Mr. Henry testified that the existing lean to is not attached to the pole building and that the fence does not run along the property line.
15. The Board found that Mr. Henry testified that the variance requested is the minimum variance necessary to afford relief.
16. The Board found that Mr. Henry testified that the pole building would have to be torn down in order to comply with the zoning requirements. Mr. Henry submitted a picture of the Property to the Board.
17. The Board found that one (1) party appeared in support of the Application.
18. The Board found that no parties appeared in opposition to the Application.

19. Based on the findings above and the testimony presented at the public hearing and the public record, the Board determined that the Application met the standards for granting a variance. The Property is unique. The Certificate of Compliance was issued. The difficulty was not created by the Applicant. The variance is necessary to enable reasonable use of the Property. The variance sought is the minimum variance necessary to afford relief.

The Board approved the variance application finding that it met the standards for granting a variance.

Decision of the Board

Upon motion duly made and seconded, the Application was approved. The Board Members voting to approve the Application were Mr. Dale Callaway, Mr. Jeff Hudson, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman. No Member voted against the Motion to Approve the Application.

BOARD OF ADJUSTMENT  
OF SUSSEX COUNTY

  
Dale Callaway  
Chairman

If the use is not established within one (1)  
year from the date below the application  
becomes void.

Date February 19, 2013