

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: LARRY F. SILCOTT AND FRANCES A. SILCOTT

(Case No. 11838)

A hearing was held after due notice on September 19, 2016. The Board members present were: Mr. Dale Callaway, Mr. John Mills, Mr. Jeff Hudson, Mr. Norman Rickard, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for variances from the front yard, side yard, and rear yard setback requirements.

Findings of Fact

The Board found that the Applicants are seeking a variance of 2.8 feet from the forty (40) feet front yard setback requirement, a variance of 6.9 feet from the fifteen (15) feet side yard setback requirement on the north side, and a variance of 9.9 feet from the twenty (20) feet rear yard setback requirement for a proposed detached pole barn. This application pertains to certain real property located on the east side of Bucks Branch Road approximately 0.38 miles north of Atlanta Road (911 Address: 20823 Bucks Branch Road, Seaford); said property being identified as Sussex County Tax Map Parcel Number 5-31-3.00-77.00.

1. The Board was given copies of the Application, a survey of the Property dated June 9, 2016, a letter in support from Paul Rhoades, photographs of the Property, 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 no correspondence in support of or in opposition to the Application.
3. The Board found that Larry Silcott was sworn in to testify about the Application. Robert Witsil, Esquire, presented the case on behalf of the Applicants.
4. The Board found that Mr. Witsil stated that the Property is unusually shaped. The Property is 106 feet deep at its deepest point and is shaped like a sword.
5. The Board found that Mr. Witsil stated that the dwelling was constructed in the Property approximately 100 years ago. The dwelling encroaches into the front yard setback area and is non-conforming.
6. The Board found that Mr. Witsil stated that the Applicants purchased the Property in 1981 and the dwelling and several outbuildings were on the Property at that time.
7. The Board found that Mr. Witsil stated that two (2) existing sheds on the north side of the Property will be removed to make room for the proposed detached pole barn. The two sheds located south of the dwelling will not be removed.
8. The Board found that Mr. Witsil stated that the proposed building will measure 40 feet by 50 feet and the Applicants plan to store their motor home and truck in the proposed building.
9. The Board found that Mr. Witsil stated that the Property is unique due to its shape and the buildable area of the Property is very small. The Applicants purchased the Property in its current shape.
10. The Board found that Mr. Witsil stated that the Property cannot be otherwise developed without any variances.
11. The Board found that Mr. Witsil stated that the surrounding area is rural and agricultural and the variances will not alter the character of the neighborhood.
12. The Board found that Mr. Witsil stated that the variances are the minimum variances necessary to afford relief.

13. The Board found that Mr. Witsil stated that the Board has approved similar variance requests in the past. See Case No. 11724 and Case No. 11778.
14. The Board found that Mr. Silcott testified that the proposed pole building cannot be constructed on the south side of the Property because the Property is too narrow on that side of the lot.
15. The Board found that Mr. Silcott testified that the sheds on the north side are very old and need to be replaced and the sheds house his tools and lawn equipment. He plans to store his tools and lawn equipment in the new structure.
16. The Board found that Mr. Silcott testified that he spoke with his neighbor Paul Rhoades and Mr. Rhoades supports the Application.
17. The Board found that Mr. Silcott testified that there is farm land and woods nearby and the proposed building will not affect neighboring properties.
18. The Board found that Mr. Silcott testified that the Applicants will use the existing driveway to access the proposed building. Some existing trees will be removed to gain access to the proposed building.
19. The Board found that Mr. Silcott testified that the edge of Bucks Branch Road is 6 to 8 feet from the property line.
20. The Board found that Mr. Silcott affirmed the statements made by Mr. Witsil.
21. The Board found that no parties appeared in support of or in opposition to the Application.
22. 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 unrebutted, 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 as it is irregularly shaped and exceptionally narrow. The Property is 106.25 deep at its deepest point and is triangularly shaped. This shape has created an exceptionally small and oddly shaped building envelope. Consequently, the Applicants have limited area where they can place a new pole building. The existing sheds on the north side of the Property are old and need to be replaced; as is clearly shown on the pictures submitted by the Applicants. It is clear to the Board that the lot's unique characteristics have created an exceptional practical difficulty for the Applicants who seek to build a new pole building on the lot.
 - b. Due to the uniqueness of the lot, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property is exceptionally narrow and oddly shaped. The existing sheds on the north side of the Property are old and need to be replaced. While the size of the proposed pole building is larger than the existing sheds which will be removed, the pole building will encroach no further into the rear yard and side yard setback areas than those sheds. The pole building also needs to be larger to accommodate the Applicants' motor home. The Applicants, however, are unable to build this pole building without violating the Sussex County Zoning Code. The Applicants have proposed to place this pole building at the deepest part of the Property but, due to the shallow depth and odd shape of the lot, the pole building still encroaches into the setback areas. The Board is convinced that the variances are necessary to enable the reasonable use of the Property as the variances will allow the Applicants to build the pole building on the Property. The Board is convinced that the size, shape, and location of the pole building are also reasonable, which is confirmed when reviewing the survey provided by the Applicants.
 - c. The exceptional practical difficulty was not created by the Applicants. The Applicants did not create the size and shape of the lot which limit the building envelope on the Property. The Property was created before the

Applicants acquired the lot and the structures on the Property were placed thereon prior to the Applicants' acquisition thereof. Two of those structures now need to be replaced. The unique characteristics of the Property are clear when reviewing the survey. The Board is convinced that the exceptional practical difficulty was not created by the Applicants but was created the lot's unique characteristics.

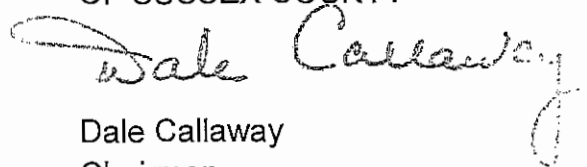
- d. The variances will not alter the essential character of the neighborhood nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare. The Board is convinced that the pole building will have no effect on the character of the neighborhood. Sheds which also encroach into the setback areas have been on the Property for many years without a complaint noted in the record. The new pole building, while larger than the existing sheds, will not encroach further into the side yard or rear yard setback areas than those sheds. The surrounding area consists of agricultural uses and the pole building will be consistent with those uses and the historical use of the Property. The Board was not convinced that a larger pole building on the Property would have any negative impact on the neighborhood. Furthermore, no evidence was presented which would indicate that the variances would somehow alter the essential character of the neighborhood or be detrimental to the public welfare. In fact, the neighbor to the north has indicated to the Board his support of the Application.
- e. 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 new pole building on the Property. The Board is convinced that the Applicants have taken appropriate measures to limit the intrusion of this pole building into the setback areas.

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 Mr. Dale Callaway, Mr. Jeff Hudson, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman. No Board Member voted against the Motion to approve the variance 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 November 22, 2016