

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: JOEL WHARTON

(Case No. 11915)

A hearing was held after due notice on February 6, 2017. The Board members present were: Mr. John Mills, Mr. Jeff Hudson, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for variances from the setback of a poultry building requirement.

Findings of Fact

The Board found that the Applicant is seeking a variance of 24.9 feet from the fifty (50) feet side yard setback requirement on the north side for a proposed poultry house. This application pertains to certain real property located on the north side of Careys Camp Road approximately 648 feet northeast of Laurel Road (911 Address: 33457 Careys Camp Road, Millsboro); said property being identified as Sussex County Tax Map Parcel Number 3-33-3.00-34.01.

1. The Board was given copies of the Application, a sketch dated August 2016, letters of support, a letter from William Ewald, a letter from the Sussex Conservation District, 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 three (3) letters in support to the Application and no correspondence in opposition to the Application.
3. The Board found that Joel Wharton was sworn in to testify about the Application.
4. The Board found that Mr. Wharton testified that he had a wetlands determination prepared and he decided to place another poultry house on the Property.
5. The Board found that Mr. Wharton testified that the storm water regulations limit his ability to place the poultry house on the Property. The storm water regulations have been altered in the past year and now require that he place a storm water management pond along with a new poultry house.
6. The Board found that Mr. Wharton testified that the storm water management pond necessitates that the poultry house be moved closer to the property line.
7. The Board found that Mr. Wharton testified that the northeast corner of the poultry house will be approximately 25 feet from the side property line while the northwest corner of the home will meet the setback requirements.
8. The Board found that Mr. Wharton testified that the Property is unique due to the storm water management regulations.
9. The Board found that Mr. Wharton testified that the proposed storm water management pond will be used for drainage.
10. The Board found that Mr. Wharton testified that there is no other room for expansion without a variance.
11. The Board found that Mr. Wharton testified that the Delaware Department of Natural Resources & Environmental Control ("DNREC") owns the adjacent property and, since DNREC is the owner of the Property, he doubts that he would be able to purchase a portion of neighboring lands to remove the encroachment.
12. The Board found that Mr. Wharton testified that the Property is in a secluded area with forestry and sits back from the road.
13. The Board found that Mr. Wharton testified that 58.5 feet separates the existing poultry house and the proposed poultry house. The engineer thought it would be best to fit the storm water management pond between the poultry houses.

14. The Board found that Mr. Wharton testified that he could not build the poultry house to be parallel with the setback line because there would not be enough room between the new house and the existing house for a truck to pass through.
15. The Board found that Mr. Wharton testified that new poultry houses are 60 feet to 65 feet wide and the proposed poultry house is smaller than the typical poultry house. The proposed poultry house is 45 feet wide.
16. The Board found that Mr. Wharton testified that his poultry provider has approved of the proposal and the poultry provider prefers that the poultry house be set back from the existing lean-to on the Property.
17. The Board found that Mr. Wharton testified that the detached lean-to meets setback requirements.
18. The Board found that Mr. Wharton testified that the tax ditch is not located on the Property.
19. The Board found that Mr. Wharton testified that the Property consists of approximately 12 acres.
20. The Board found that Mr. Wharton testified that the Property is unusually shaped as the Property is narrow in the front and wide in the rear.
21. The Board found that Mr. Wharton testified that there is a manufactured home located near the front of the lot preventing the poultry house from being placed elsewhere.
22. The Board found that Mr. Wharton testified that the location of the proposed poultry house is the only possible place it can be located.
23. The Board found that no parties appeared in support of or in opposition to the Application.
24. 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 a large, irregularly shaped lot. The unique shape of the lot limits the building envelope of the Property even though it is a large lot. The Applicant is also limited by newly enacted storm water regulations which require that a storm water management pond be installed; thereby further limiting the buildable area of the Property. It is clear to the Board that the lot's unique characteristics have created an exceptional practical difficulty for the Applicant who seeks to construct a poultry house 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 has a unique shape and is subject to storm water management requirements. The Applicant seeks to construct a poultry house but is unable to do so without violating the Sussex County Zoning Code. The Board is convinced that the variances are necessary to enable the reasonable use of the Property as the variances will allow the Applicant to construct a reasonably sized poultry house on the Property. The Board is convinced that the shape and location of the poultry house are also reasonable, which is confirmed when reviewing the exhibits provided by the Applicant.
 - c. The exceptional practical difficulty was not created by the Applicant. The Applicant did not create the shape and size of the lot or enact the storm water management requirements which greatly limit the buildable area of the Property. The unique characteristics of the Property are clear when reviewing the exhibits. The Board is convinced that the exceptional practical difficulty was not created by the Applicant but was created the lot's unique characteristics.

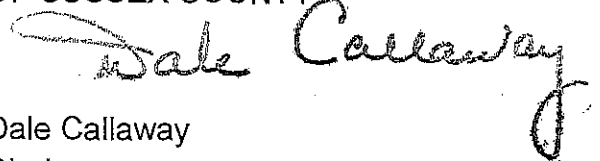
- d. The variance will not alter the essential character of the neighborhood nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare. The Board is convinced that the poultry house will have no effect on the character of the neighborhood. The Property already houses two other poultry houses and the addition of this new poultry house should not affect the character of the neighborhood. Notably, neighbors submitted letters supporting the Application and the neighboring property closest to the poultry house is owned by the State. The nearby land is wooded and the area where the poultry house is to be located is largely secluded. Furthermore, no evidence was presented which would indicate that the variance would somehow alter the essential character of the neighborhood or be detrimental to the public welfare.
- e. 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 construct a reasonably sized poultry house on the Property. The Board notes that the house is narrower than other houses recommended by the poultry provider and only a portion of the house encroaches into the setback area. The Board finds that the Applicant has taken appropriate steps to limit the encroachment while providing enough space for the storm water management pond and separation distance between the existing poultry houses.

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. Jeff Hudson, Mr. John Mills, and Mr. Brent Workman. No Board Member voted against the Motion to approve the variance application. Mr. Dale Callaway and Mr. Norman Rickard did not participate in the discussion or vote on this 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 3/8/2017