

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: BRIAN STEELE

(Case No. 11923)

A hearing was held after due notice on February 20, 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 side yard and rear yard setback requirements.

Findings of Fact

The Board found that the Applicant is requesting a variance of 10 feet from the fifteen (15) feet side yard setback requirement on the south side for an existing shed and a variance of 15 feet from the twenty (20) feet rear yard setback requirement for an existing shed. This application pertains to certain real property located on the west side of Cods Road approximately 1,383 feet north of Thirteen Curves Road (911 Address: 8920 Cods Road, Milford); said property being identified as Sussex County Tax Map Parcel Number 2-30-16.00-2.00.

1. The Board was given copies of the Application, a portion of the tax map of the area, an aerial photograph of the Property, and a survey dated April 6, 2012.
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 Brian Steele was sworn in to testify about the Application. Mr. Steele submitted a letter of support from Prime Hook Farms, Inc.
4. The Board found that Mr. Steele testified that the Property is unique due to a survey issue.
5. The Board found that Mr. Steele testified that the survey stakes were moved at some point during construction. This surveying error has led to an exceptional practical difficulty as a pole barn was incorrectly placed on the Property.
6. The Board found that Mr. Steele testified that he obtained an inspection after the pole barn was constructed and believed it complied with the Code at that time.
7. The Board found that Mr. Steele testified that the survey marker was on the Property but he believes it was in the wrong location.
8. The Board found that Mr. Steele testified that there is no possibility that the Property can be developed in strict conformity with the Sussex County Zoning Code and the variances are necessary to enable reasonable use of the Property.
9. The Board found that Mr. Steele testified that the exceptional practical difficulty was not created by the Applicant.
10. The Board found that Mr. Steele testified that the variances will not alter the essential character of the neighborhood or be detrimental to the public welfare.
11. The Board found that Mr. Steele testified that the variances requested are the minimum variances to afford relief and represent the least modifications of the regulations at issue.
12. The Board found that Mr. Steele testified that the shed shown on the southwest corner of the Property is actually a pole barn. The shed shown on the survey in the northwest corner of the Property has been removed.
13. The Board found that Mr. Steele testified that he is requesting the variances for the pole barn.
14. The Board found that Mr. Steele testified that he reached an agreement with his neighbor to acquire a portion of the land where the pole barn encroached onto their lands.

15. The Board found that Mr. Steele testified that the neighbor has submitted a letter supporting this request.
16. The Board found that Mr. Steele testified that the pole barn has been on the Property since 2006 and he has not received any complaints from neighbors about the pole barn.
17. The Board found that Mr. Steele testified that the issue arose when he obtained a survey prior to listing the Property for sale.
18. The Board found that William Emmert was sworn in to testify in support of the Application.
19. The Board found that Mr. Emmert testified that he and his two partners have owned the surrounding farm for 35 years and they do not object to the request. He said that the Applicant has always been a great neighbor.
20. The Board found that Mr. Emmert testified that he believes the issue arose due to a surveying error and an agreement was reached regarding the piece of the Property purchased by the Applicant.
21. The Board found that one (1) party appeared in support of the Application.
22. The Board found that no parties appeared in opposition to the Application.
23. 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 un rebutted, 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 due to a surveying error which gave the Applicant the incorrect impression that the Property was larger than it actually was. It appears as though a surveying stake was either incorrectly placed or negligently moved by contractors when the Applicant was developing the Property. The incorrect placement of the surveying stake led to the misplacement of a pole barn in the southwest corner of the Property. The pole barn was placed too close to the rear yard property line and extended onto neighboring lands. Fortunately, the Applicant reached an agreement with his neighbor to acquire lands to south and rear to eliminate the encroachment onto neighboring lands and to acquire some additional buffer space. The Board finds that the situation is quite unique and has created an exceptional practical difficulty for the Applicant who seeks to retain a pole barn on the lot.
 - b. Due to the uniqueness of the situation, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The surveying stakes for the Property were incorrectly placed or moved and this error led to an encroachment of a pole barn onto neighboring lands and in the side yard and rear yard setback areas. The pole barn is a large structure and cannot be moved into compliance. While the Applicant purchased land from his neighbor to eliminate the encroachment onto the neighbor's property, the Applicant was not able to purchase land to eliminate the encroachment into the setback area; though the encroachments have been reduced by this acquisition. Ultimately, the Applicant seeks to retain the pole barn in its existing location 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 a reasonably sized pole barn to remain on the Property. The Board is convinced that the shape and location of the pole barn are also reasonable, which is confirmed when reviewing the survey provided by the Applicant. The Board also notes that the Applicant has moved a shed which also encroached into the rear yard setback area. This shed was smaller and the

Board appreciates the Applicant's willingness to take measures to bring the Property into compliance.

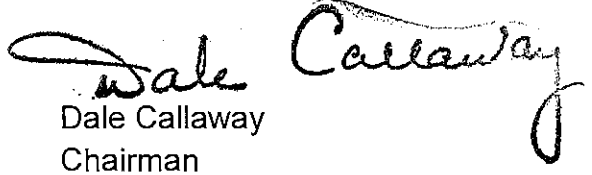
- c. The exceptional practical difficulty was not created by the Applicant. The Applicant reasonably relied on his surveyor and contractor to place the surveying stakes and to construct the pole barn in compliance with the Sussex County Zoning Code. Since the surveying stake was misplaced, the Applicant reasonably believed that the pole barn complied with the Code only to find out years later that the pole barn encroached onto neighboring lands. The misplacement of the surveying stakes has created the exceptional practical difficulty for the Applicant and the Board finds that this error was not self-created by the Applicant. If the surveying stakes had been placed properly – or not moved by construction workers (whichever the case may be) – the pole barn would have been placed in compliance with the Code.
- 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 barn will have no effect on the character of the neighborhood. The pole barn has been on the Property in its current location for over 10 years without complaint. The owner of the neighboring property most affected by the Application has submitted a letter and testimony in support of the request. 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.
- 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 Applicant has demonstrated that the variances sought will allow the Applicant to retain the pole barn on the Property. The Board also finds that the Applicant has taken appropriate and adequate measure to work with his neighbor to remove the encroachment onto neighboring lands by purchasing a portion of the neighboring lands. The purchase of these lands has also reduced the encroachment into the setback areas. The Applicant has also moved a shed out of the setback area to further minimize the encroachment. These actions demonstrate that the Applicant has minimized the need for the variance and only sought variances after he exhausted other remedies.

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 Members 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 April 4, 2017.