

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: RANDY NOSIA & KATHLEEN J. NOSIA

(Case No. 12012)

A hearing was held after due notice on August 21, 2017. The Board members present were: Mr. Dale Callaway, Ms. Ellen Magee, Mr. John Mills, 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 were seeking a variance of 5.4 feet from the thirty (30) feet front yard setback requirement for a proposed pole building, a variance of 8.8 feet from the ten (10) feet rear yard setback requirement for a proposed pole building, a variance of 6.1 feet from the ten (10) feet rear yard setback requirement for a proposed pole building, a variance of 8.8 feet from the ten (10) feet side yard setback requirement on the west side for a proposed pole building, a variance of 9.0 from the ten (10) feet side yard setback requirement on the west side for a proposed pole building, a variance of 2.2 feet from the thirty (30) feet front yard setback requirement for the existing dwelling, and a variance of 1.9 feet from the thirty (30) feet front yard setback requirement for the existing dwelling. This application pertains to certain real property located at the north side of Patterson Drive approximately 1,257 feet northwest of Zoar Road (SCR 48) (911 Address: 32 Patterson Drive, Georgetown); said property being identified as Sussex County Tax Map Parcel Number 2-34-15.00-234.00. After a hearing, the Board made the following findings of fact.

1. The Board was given copies of the Application, a portion of the tax map of the area, a letter of no objection from the Patterson Place Homeowner Association, pictures, minutes for Case No. 8398, an email from the Delaware Department of Transportation ("DelDOT"), and a survey of the Property dated June 20, 2017.
2. The Board found that the Office of Planning and Zoning received one (1) letter in support of the Application and no correspondence in opposition to the Application.
3. The Board found that Randy Nosia was sworn in to testify about the Application.
4. The Board found that Mr. Nosia testified that the Property is located in Patterson Place and is located off a cul-de-sac.
5. The Board found that Mr. Nosia testified that he is proposing to place a pole building, which measures 26 feet by 40 feet, on the Property for his classic cars and storage. He plans to store at least two (2) of his three (3) classic cars in the building.
6. The Board found that Mr. Nosia testified that the two existing sheds on the Property will be removed. The pole building will be located in the place of where the existing sheds are located.
7. The Board found that Mr. Nosia testified that the location of the septic system in the rear yard limits the placement of the pole building elsewhere on the lot.
8. The Board found that Mr. Nosia testified that the property is unique because it is located on a cul-de-sac which skews the front property line.
9. The Board found that Mr. Nosia testified that he cannot move the structure closer to the home due to the location of his septic system.
10. The Board found that Mr. Nosia testified that the Applicants purchased the Property in 1999 and plan to move to the location permanently.
11. The Board found that Mr. Nosia testified that approval was received from the homeowners association.

12. The Board found that Mr. Nosia testified that the rear yard is heavily tree lined and wooded and the closest home to the rear of the Property is approximately 70 yards away.
13. The Board found that Mr. Nosia testified that a variance was previously granted for the dwelling.
14. The Board found that Mr. Nosia testified that a neighbor has a larger pole building.
15. The Board found that Mr. Nosia testified that the variances will not affect the character of the neighborhood and that the variances requested are the minimum variances to afford relief.
16. The Board found that one (1) parties appeared in support of the Application.
17. The Board found that no parties appeared in opposition to the Application
18. 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 due to its unique shape and the location of the septic system. The Property is located on a cul-de-sac and the southwest corner of the Property is oddly shaped due to the cul-de-sac. This unusual shape has created an odd building envelope which is further constrained by the location of a septic system. The Property is currently improved by a dwelling and two sheds. The Applicants seek approval to remove the sheds and place a pole building in a similar location. The Applicants explored placing the pole building elsewhere on the lot but they are unable to do so due to the location of the septic system, dwelling, and the cul-de-sac. These unique conditions have created an exceptional practical difficulty for the Applicants.
 - 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 the buildable area thereof is limited due to its shape and the lot is further constrained due to the location of the septic system. The Applicants seek to retain a dwelling and to construct a reasonably sized pole building but are 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 dwelling to remain on the Property and for the Applicants to construct a pole building. The Board is convinced that the size, shape, and location of these structures are reasonable, which is confirmed when reviewing the survey and pictures provided by the Applicants.
 - c. The exceptional practical difficulty was not created by the Applicants. The Applicants did not create the unusual shape of the Property and there was no evidence that the Applicants had control over the placement of the septic system. These unique conditions have resulted in a limited building envelope on the Property and the small building envelope has created the exceptional practical difficulty.
 - 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 dwelling and pole building will have no effect on the character of the neighborhood. The dwelling has been on the Property for many years and, despite the longstanding location of the home, no complaints were noted in the record about the location of the dwelling. 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. Rather, the Board received a letter of support signed by neighbors who support the Application. The Board also notes that a similar pole building is located in the neighborhood.

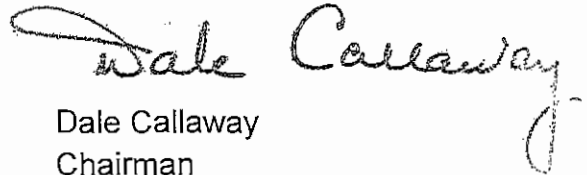
- e. The variances sought are the minimum variances necessary to afford relief and the variances requested represent the least modifications possible of the regulations at issue. The Applicants have demonstrated that the variances sought will allow the Applicants to retain a reasonably sized dwelling and to construct a pole building on the Property. The Board is convinced that the Applicants have explored ways to otherwise place the pole building on the Property but they are constrained due to the lot's unique conditions.

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. John Mills, and Mr. Brent Workman. Ms. Ellen Magee and Mr. Norman Rickard 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 October 17, 2017