

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

**IN RE: JERE F. DANZ & SALLY L. DANZ**

**(Case No. 12056)**

A hearing was held after due notice on November 20, 2017. The Board members present were: Mr. Dale Callaway, Ms. Ellen Magee, Mr. Bruce Mears, Mr. John Mills, 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 Applicants are seeking a variance of 1.8 feet from the fifteen (15) feet side yard setback requirement on the north side for an existing pole barn. This application pertains to certain real property located on the northeast side of Hudson Street Extension, in the Creek Falls Farm subdivision off of Hudson Road (911 Address: 403 Hudson Street Extension, Milton); said property being identified as Sussex County Tax Map Parcel Number 2-35-22.00-551.00.

1. The Board was given copies of the Application, an aerial photograph of the Property, a Certificate of Compliance, a survey of the Property dated August 24, 2017, 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 Deborah Galonsky, Esquire, presented the case to the Board on behalf of the Applicant and submitted exhibits for the Board to review.
4. The Board found that Ms. Galonsky stated that the situation is unique because the Applicants had the pole barn placed on the Property and received a permit and Certificate of Compliance from Sussex County.
5. The Board found that Ms. Galonsky stated that the Applicants learned of the encroachment when the Applicants listed the Property for sale and the Applicants do not wish to remove the pole barn.
6. The Board found that Ms. Galonsky stated that leaving the pole barn will not disturb the neighborhood or affect property values.
7. The Board found that Ms. Galonsky stated that the Applicants relied on a contractor to place the pole barn and the Applicants did not physically construct the pole barn.
8. The Board found that Ms. Galonsky stated that the Applicants are in the process of selling the Property.
9. The Board found that Ms. Galonsky's statements were not supported by verified testimony or affidavits. Since no persons appeared in support or opposition to the Application, the Board voted to continue the Application and leave the case open until December 11, 2017, at which time the Board held a second public hearing on the matter.
10. The Board found that Sally Danz was sworn in to testify about the Application. Thomas Carney, Esquire, presented the case on behalf of the Applicants. Mr. Carney submitted an exhibit into the record.
11. The Board found that Mr. Carney stated that the pole building connects to the existing driveway on the Property and that the Property is unique due to the location of the driveway.
12. The Board found that Mr. Carney stated that the pole barn was placed in its location due to the existing driveway.

13. The Board found that Mrs. Danz testified that the Applicants purchased the Property in June 2006 and the pole barn is used to house their boat, fishing, and crabbing equipment.
14. The Board found that Mrs. Danz testified that Delmarva Pole Building Supply built the structure and the contractor secured the building permit.
15. The Board found that Mrs. Danz testified that the Applicants believed the pole building was to be constructed 16 feet from the side yard property line and the builder made a calculation error.
16. The Board found that Mr. Carney stated that the exceptional practical difficulty was not created by the Applicants.
17. The Board found that Mr. Carney stated that the Applicants are selling the Property and a survey showed the encroachment.
18. The Board found that Mr. Carney stated that the contractor made an error and that the building permit and a certificate of compliance were issued by the County.
19. The Board found that Mr. Carney stated that the pole building does not threaten the character of the neighborhood and the variance requested is the minimum variance necessary to afford relief.
20. The Board found that Mrs. Danz testified that she expected her contractor to place the pole building in compliance with the Sussex County Zoning Code and she was told by her contractor that it would be placed 16 feet from the side yard property line.
21. The Board found that Mrs. Danz testified that the Property is served by well and septic. The septic is in the front yard and the well is located behind the pole building.
22. The Board found that Mrs. Danz affirmed the statements made by Mr. Carney as true and correct.
23. The Board found that no parties appeared in support of or in opposition to the Application at either hearing.
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 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 clearly unique due to the location of the driveway on the north side of the Property. The driveway's location restricted the area where the pole building could be located. The Property is also improved by a well and septic which are located in the building envelope and restrict the area where the building can be placed. These unique physical conditions have created an unusual and limited building envelope for the Applicants. Additionally, the Applicants relied on their builder to place the pole building on the Property in compliance with the Sussex County Zoning Code only to find out years later about the encroachment. This situation is also, thus, unique.
  - b. Due to the uniqueness of the Property and situation, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The pole building was constructed in 2006 and the Applicants seek to retain the existing pole building on the Property but are unable to do so without violating the Sussex County Zoning Code. The Board is convinced that the variance is necessary to enable the reasonable use of the Property as the variance will allow the pole building to remain on the Property. The Board is convinced that the shape and location of this pole building are reasonable, which is confirmed when reviewing the survey provided by the Applicants. The pole building cannot be moved into compliance and is necessary for storage of the Applicants belongings.
  - c. The exceptional practical difficulty was not created by the Applicants. The Applicants did not develop the Property and the existing physical conditions

of the Property have created a unique situation. The Applicants also reasonably relied upon a builder to construct the pole building in compliance with the Sussex County Zoning Code only to find out many years later that the pole building did not comply with the Code's requirements. This situation was exacerbated by the fact that a Certificate of Compliance was erroneously issued. None of these issues have been created by the Applicants.

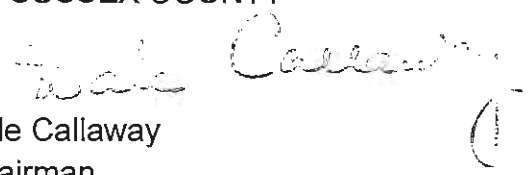
- d. The variance will not alter the essential character of the neighborhood nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare. The pole building has been on the Property for many years without recorded complaints. Despite the longstanding location of the pole building and notification to neighbors, no complaints were noted in the record about its location. 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 Applicants have demonstrated that the variance sought will allow the Applicants to retain the existing pole building on the same footprint. No additions or modifications to the pole building are sought or planned.

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, Ms. Ellen Magee, Mr. Bruce Mears, Mr. John Mills, 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 February 6, 2018.