

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

**IN RE: NAN MARTINO**

**(Case No. 12069)**

A hearing was held after due notice on December 18, 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 variances from the front yard and side yard setback requirements.

Findings of Fact

The Board found that the Applicant is seeking a variance of 23.4 feet from the thirty (30) feet front yard setback requirement for an existing pole building and a variance of 1.5 feet from the five (5) feet side yard setback requirement on the northeast side for an existing shed. This application pertains to certain real property located at the end of Oakwood Court, approximately 300 feet east of the intersection of Cedarwood Drive and Oakwood Court (911 Address: 6 Oakwood Court, Lewes); said property being identified as Sussex County Tax Map Parcel Number 2-34-11.00-175.00.

1. The Board was given copies of the Application, an aerial photograph of the Property, a survey of the Property dated September 25, 2017, pictures, a building permit application, and a portion of the tax map of the area.
2. The Board found that the Office of Planning & Zoning received one (1) letter in support of the Application and no correspondence in opposition to the Application.
3. The Board found that Nan Martino and Michelle Sartan were sworn in to testify about the Application and submitted pictures into the record for the Board to review.
4. The Board found that Ms. Sartan testified that she is a representative of Diamond State Pole Buildings ("DSPB") and assisted the Applicant with the installation of the pole building. DSPB believed the structure met the setback requirements based on the available drawings.
5. The Board found that Ms. Sartan testified that no placement survey was required.
6. The Board found that Ms. Sartan testified that the Property is unique.
7. The Board found that Ms. Sartan testified that the encroachments were not discovered prior to the pouring of concrete.
8. The Board found that Ms. Sartan testified that the building is now erected.
9. The Board found that Ms. Sartan testified that the shed has been on the Property for thirty (30) years and prior to the Applicant's ownership.
10. The Board found that Ms. Sartan testified that there is no other place where the pole building could be located.
11. The Board found that Ms. Sartan testified that the septic is located in the rear yard and the Property is serviced by a well.
12. The Board found that Ms. Sartan testified that the building is not detrimental to the public welfare.
13. The Board found that Ms. Sartan testified that the cul-de-sac was widened a few years ago.
14. The Board found that Ms. Martino testified that she lost a portion of the Property due to the widening of the cul-de-sac a few years ago.
15. The Board found that Ms. Sartan testified that DSPB relied on a drawing of the Property that did not show any structures.
16. The Board found that Ms. Sartan testified that there are two sets of fences on the Property and they used the fences for the measurements.

17. The Board found that Ms. Sartan testified that she believed the front yard setback requirement was thirty (30) feet.
18. The Board found that Ms. Martino testified that DSPB obtained the building permit.
19. The Board found that Ms. Martino testified that she has owned the Property for 5 years.
20. The Board found that Ms. Martino testified that there is approximately 33 feet from the edge of paving of the cul-de-sac to the edge of the pole building.
21. The Board found that Ms. Martino testified that the building measures 20 feet by 40 feet.
22. The Board found that Ms. Martino testified that the building was erected in May 2017 and permits were issued in February or March 2017. She was notified by Planning & Zoning of the encroachment after the building was erected.
23. The Board found that Ms. Sartan testified that DSPB builds approximately 200 pole buildings a year.
24. The Board found that Ms. Martino testified that the encroaching shed was on the Property when she purchased the Property.
25. The Board found that Ms. Martino testified that her neighbors do not object to the request.
26. The Board found that Ms. Martino testified that there is an easement of approximately 3 feet from the edge of paving to the mailbox.
27. The Board found that Ms. Martino testified that, if she had known of the encroachment issues, she would not have built a building that size.
28. The Board found that Ms. Martino testified that she did not create the exceptional practical difficulty for the shed.
29. The Board found that two (2) parties appeared in support of the Application.
30. The Board found that no parties appeared in opposition to the Application.
31. The Board tabled its decision on the Application until January 8, 2018, at which time it discussed and voted on the Application.
32. 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 its shape. The Property has a curved front yard and the rear yard comes to a point. This unique shape, as is clearly shown on the survey, has created an unusually shaped building envelope. As such, a significant portion of the rear yard and side yards are likely unbuildable due to this shape. The unique characteristics of this Property have created an exceptional practical difficulty for the Applicant who seeks to retain the existing shed and pole building on the lot. The Property is also serviced by well and septic which further limit the building area of 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 the buildable area thereof is limited due to its shape. The buildable area is also limited by the location of the well and septic system on the lot. The Applicant seeks to retain a shed and pole building of reasonable size 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 shed and pole building to remain on the Property. The Board is convinced that the shape and location of the shed and pole building are also reasonable, which is confirmed when reviewing the survey provided by the Applicant. The Board also notes that, due to the unique

shape of the Property, it is unlikely that these structures could be placed elsewhere on the lot in compliance with the Code.

- c. The exceptional practical difficulty was not created by the Applicant. The Applicant did not create the unusual shape of the Property. The Applicant only recently acquired the Property. The unique lot shape has resulted in a limited building envelope on the Property and the uniquely shaped building envelope has created the exceptional practical difficulty. 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 Applicant but was created the lot's unique characteristics. The Board also notes that the shed was placed on the Property by a prior owner and the pole building was placed on the Property by a contractor whom the Applicant relied upon to construct the pole building in compliance with the zoning requirements.
- 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 shed and pole building will have no effect on the character of the neighborhood. Despite the fact that the shed has been on the Property for many years and neighbors have been notified of this Application, no evidence was presented that the shed would somehow alter the essential character of the neighborhood. Likewise, there was no evidence submitted that the pole building would somehow alter the essential character of the neighborhood either. The Board also notes that there is a gap between the edge of paving of the adjacent cul-de-sac and the front property line thereby reducing the impact of the front yard encroachment.
- 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 a reasonably sized shed and pole building on the Property. These structures cannot be moved into compliance with the zoning requirements and the Applicant does not propose to make any additions or modifications to the structures.

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, and Mr. Brent Workman. No Board Member voted against the Motion to approve the variance application. Mr. John Mills 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 March 6, 2018