

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

**IN RE: JAMES HITCHENS, JR. & MARA LEIGH HITCHENS**

**(Case No. 12108)**

A hearing was held after due notice on February 19, 2018. The Board members present were: Mr. Dale Callaway, 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 3.6 feet from the fifteen (15) feet side yard setback requirement on the west side for an existing pole barn. This application pertains to certain real property located on the southwest corner of Summer Road and Hickory Hill Road. (911 Address: 25282 Summer Road, Millsboro); said property being identified as Sussex County Tax Map Parcel Number 2-33-9.00-19.00.

1. The Board was given copies of the Application, a survey of the Property dated January 8, 2018, a building permit, 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 no correspondence in support of or in opposition to the Application.
3. The Board found that Mara Hitchens was sworn in to testify about the Application.
4. The Board found that Ms. Hitchens testified that the Property is unique because it is heavily wooded and is a corner lot.
5. The Board found that Ms. Hitchens testified that the shed was built in 1980.
6. The Board found that Ms. Hitchens testified that she inherited the Property from her grandparents.
7. The Board found that Ms. Hitchens testified that the septic used to be located in the rear of the Property and the shed was likely located in its present location due to the septic system's location.
8. The Board found that Ms. Hitchens testified that the shed is a pole barn with a concrete pad and electricity thereby making it very costly to move.
9. The Board found that Ms. Hitchens testified that she did not create the need for the variance.
10. The Board found that Ms. Hitchens testified that the building will not alter the essential character of the neighborhood.
11. The Board found that Ms. Hitchens testified that the building existed since 1980 and there have been no complaints about the building.
12. The Board found that Ms. Hitchens testified that the neighbors have received a similar variance.
13. The Board found that Matt Williams was sworn in and testified in support of the Application.
14. The Board found that Mr. Williams testified that his garage backs up to the Applicants' property. He has lived next-door for 23 years and his property is the lot most affected by the variance.
15. The Board found that Mr. Williams testified that the Applicants' pole building has never bothered him and he supports the Application.
16. The Board found that three (3) 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 weighed and considered,

the Board determined that the application, as amended, 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 as it is a heavily wooded corner lot. The Property is also unique because it was previously improved by a septic system which limited the buildable area of the lot. These unique physical conditions have created an exceptional practical difficulty for the Applicants by creating an unusual and limited building envelope for the Applicants. The situation is also unique because building was erected in 1980 by a prior owner and the building permit indicated that the side yard setback requirement was only 3 feet.
- b. Due to the uniqueness of the Property, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The pole building was erected many years ago by a prior owner and is improved by a concrete floor and electricity. The Applicants seek to retain the structure 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 size, shape, and location of this pole building are reasonable, which is confirmed when reviewing the survey provided by the Applicants.
- c. The exceptional practical difficulty was not created by the Applicants. The Property was created and developed many years ago by a prior owner. The building envelope was limited because the lot is a corner lot and due to the location of the septic system. The Applicants did not create the size and shape of the lot and the Applicants did not place the pole building on the lot. Rather, those conditions pre-existed the Applicants' acquisition of the Property. Ultimately, these unique physical conditions have resulted in a limited building envelope and have created the exceptional practical difficulty for 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 building has been on the Property for nearly 40 years without complaints from neighbors. In fact, the neighbor most affected by the encroachment has no objection to the variance request. Furthermore, no evidence was presented 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 a reasonably sized pole building on the lot. No additions or modifications to the pole building are proposed.

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. Bruce Mears, Mr. John Mills, and Mr. Brent Workman. No Board Member voted against the Motion to approve the variance application. Ms. Ellen Magee 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 two (2)  
years from the date below the application  
becomes void.

Date April 17, 2018