

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

**IN RE: DAVID QUIGLEY**

**(Case No. 12121)**

A hearing was held after due notice on April 9, 2018. 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 side yard setback requirement.

Findings of Fact

The Board found that the Applicant is seeking a variance of 7.5 feet from the fifteen (15) feet side yard setback requirement on the north side and a variance of 0.6 feet from the fifteen (15) feet side yard setback requirement on the north side for an existing barn. This application pertains to certain real property located on the west side of Cool Spring Road, approximately one mile north of Stockley Road. (911 Address: 20356 Cool Spring Road, Milton); said property being identified as Sussex County Tax Map Parcel Number 2-34-5.00-38.11.

1. The Board was given copies of the Application, a building permit application, a survey of the Property dated February 20, 2018, 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 one (1) letter in support of the Application from the adjacent neighbor and no correspondence in opposition to the Application.
3. The Board found that David Quigley was sworn in to testify about the Application.
4. The Board found that Mr. Quigley testified that the pole barn was constructed parallel to the street but the side property line has a steep angle.
5. The Board found that Mr. Quigley testified that the builder acquired all the building permits. He called the Planning and Zoning Office about the requirements for the overhang for the pole barn and he was told that the overhang could encroach into the setback area.
6. The Board found that Mr. Quigley testified that the pole barn does not encroach into the setback area but the overhang encroaches.
7. The Board found that Mr. Quigley testified that the septic system is exactly 10.5 feet from the barn.
8. The Board found that Mr. Quigley testified that the rear yard is wooded with wetland areas.
9. The Board found that Mr. Quigley testified that there is no other place on the lot where the pole barn could be located and that he explored other options.
10. The Board found that Mr. Quigley testified that the pole barn was built to look like a barn and the pole barn is not out of character with the neighborhood.
11. The Board found that Mr. Quigley testified that there is a ten (10) feet overhang off the side of the pole barn.
12. The Board found that Mr. Quigley testified that the pole encroaches less into the side yard near the front yard but encroaches farther into the side yard near the rear yard due to the angle of the side property line.
13. The Board found that Mr. Quigley testified that the overhang is supported by posts. The overhang is an open, lean-to.
14. The Board found that one (1) party appeared in support of the Application.
15. The Board found that no parties appeared in opposition to the Application.

16. 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 as is evidence by the survey. The Property has sharp angles along the side property lines. The Property is also serviced by a septic system which limits the buildable area of the lot. The buildable area is further reduced by the fact that the rear portion of the lot consists of wetlands. Ultimately, the unique characteristics of this Property limit the buildable area available to the Applicant and have created an exceptional practical difficulty for the Applicant who seeks to retain an existing pole building on 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 the lot's shape, the wetlands, and the septic system. The Applicant seeks to retain a 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 the pole building to remain on the Property. The Board is convinced that the shape and location of the pole building are also reasonable, which is confirmed when reviewing the survey provided by the Applicant.
  - c. The exceptional practical difficulty was not created by the Applicant. The Applicant did not create the unusual shape of the Property or create the wetlands or septic issues. These unique conditions have resulted in a limited building envelope on the Property and the small building envelope has created the exceptional practical difficulty. The unique shape of the Property is 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. Furthermore, the Applicant relied on a builder to construct the pole building in compliance with the Sussex County Zoning Code only to later find out about the encroachments.
  - 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 building will have no effect on the character of the neighborhood. The un rebutted testimony demonstrates that the pole building is attractive and that the Applicant considered during construction the appearance of the pole building. No evidence was presented that the variances would somehow alter the essential character of the neighborhood. The Board also notes that only a small portion of the front corner of the pole building encroaches into the side yard setback area and that the pole building encroaches farther into the setback area towards the rear of the structure. As such, the encroachment into the setback area is not as great as it would be if the entire structure was 7.5 feet from the side yard property line. This placement likely reduces the impact of the encroachment on the neighboring property to the north.
  - 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 this reasonably sized pole building on the Property. The Board is convinced that the Applicant explored other

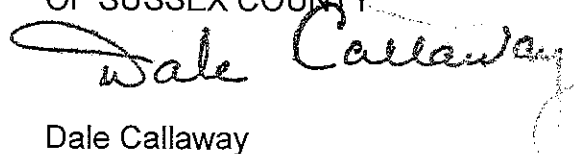
options within the building envelope but was constrained by the Property's unique conditions.

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, 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 two (2) year from the date below the application becomes void.

Date May 22, 2018

finds that no variance is necessary to afford relief since the Property can be developed by a shed in strict conformity with the Sussex County Zoning Code. Assuming, *arguendo*, that a variance for the shed was necessary, the Board is not convinced that the Applicant explored other means why which to place a shed on the Property to minimize the need for a variance either by reducing the size of the shed or by relocating it elsewhere on the lot.

The Board granted the variance application for the front yard variance for the existing steps finding that it met the standards for granting a variance and the Board denied the variance application for the side yard variances for the existing shed finding that it failed to meet the standards for granting a variance.

Decision of the Board

Upon motion duly made and seconded, the variance application was approved in part and denied in part. The Board Members in favor of the motion 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 in part and to deny the variance application in part.

BOARD OF ADJUSTMENT  
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Dale Callaway  
Chairman

Date

May 22, 2018