

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

**IN RE: MINOS MARKET LLC**

**(Case No. 12137)**

A hearing was held after due notice on May 7, 2018. The Board members present were: Mr. Dale Callaway, Mr. John Mills, Mr. Bruce Mears, Mr. Brent Workman, and Ms. Ellen Magee.

Nature of the Proceedings

This is an application for a Special Use Exception for a garage/studio apartment and a variance from the front yard setback for an existing building (Sections 115-23, 115-25, 115-182 and 115-210 of the Sussex County Zoning Code).

Findings of Fact

The Board found that the Applicant is seeking a Special Use Exception for a garage/studio apartment and a variance of nine (9) feet from the forty (40) feet front yard setback for an existing deck on a parcel of land zoned AR-1 Agricultural Residential. The property is identified as Sussex County Tax Map and Parcel Number 3-34-5.00-69.00, with a 911 address of 17127 Minos Conway Road, Lewes, Delaware.

After the hearing, the Board made the following finding of fact:

1. The Board was given copies of the Application, building plans, a copy of the County Assessment card, a survey of the property, and a portion of the tax map of the area.
2. Jennifer Walls, of Sussex County, described the case and stated that the Office of Planning and Zoning has received no letters in opposition to the Application.
4. The Board found that Wayne Warren was sworn in and testified on behalf of the applicant.
5. The Board found that Mr. Warren testified that he purchased the subject property in May of 2017.
6. The Board found that Mr. Warren testified that when he purchased the property, a survey was performed. The home with the deck was in existence at the time he purchased the property.
7. The Board found that Mr. Warren testified that this home was built in the 1950s.
8. The Board found that the need for the front yard variance is to approve the location of the existing deck.
9. The Board found that Mr. Warren testified that the special use exception is necessary so that the can install a living space in an existing pole building on the property for his daughter.
10. The Board found that Mr. Warren testified that the new living space is necessary because the existing home on the property is very small and is not winterized.
11. The Board found that Mr. Warren testified that, although he has constructed the pole building, he has not yet installed any living area in it. The pole building will be considered the main dwelling area and the existing house will be used for the garage / studio apartment.
12. The Board found that Mr. Warren testified that the property is served by County sewer.
13. The Board found that Mr. Warren testified that the existing pole building is legal in its location and that the location and appearance will not change if a living space is installed in it – there will be no effect on neighboring properties one way or the other based on what will be interior construction and use.
14. The Board found that Mr. Warren testified that it is his opinion that the use will not substantially adversely affect the uses of neighboring and adjacent properties.

15. The Board found that Mr. Warren testified that the property is unique in shape as a triangle with frontage on two roads.
16. The Board found that Raymond Remmerman, Jr. and Sr. were sworn in and testified in support of the application. Mr. Remmerman, Jr., lives next door and shares a driveway with the applicant and that the pole building looks nice and does not bother him.
17. The Board found that Jackie Warren was sworn in and testified in support of the application. She will reside in the pole building, and that she needs a place to reside year-round.
18. The Board found that Uwe Shulz, Frank Wilk and Allan Levin were sworn in and testified in opposition to the application for the special use exception for a garage/studio apartment. They do not object to the variance request.
19. The Board found that Mr. Shulz, Mr. Wilk and Mr. Levin testified that they are opposed to the pole barn because (a) it affects their property values; (b) that the pole building is too close to their properties; and (c) that the pole building should have been built further away from their homes.
20. The Board found that Mr. Shulz, Mr. Wilk and Mr. Levin did not bring any expert testimony or other specific evidence of any adverse impact upon their property values.
21. The Board found that four (4) persons appeared in support of the Application.
22. The Board found that three (3) persons appeared in opposition to the Application.
23. The Board found that the pole building is legally sited on the applicant's property and complies with all setbacks.
24. Based on the findings above and the testimony and evidence presented during the Public Hearing and contained in the Public Record, the Board determined that the Special Use Exception Application should be granted for a garage/studio apartment on a parcel of land zoned AR-1 Agricultural Residential. The findings below further support the Board's decision to grant the Special Use Exception Application:
  - (a) This is a Special Use Exception for a garage/studio apartment within an existing dwelling. The existing pole building will be converted into the main living space and the existing dwelling will be used for the apartment.
  - (b) The site is zoned AR-1 and garage/studio apartments are authorized as a special use exception in the AR-1 zone with approval from this Board.
  - (c) There was substantial testimony in support of the Application.
  - (d) The proposed garage/studio apartment will not substantially affect adversely the uses of adjacent and neighboring properties for the following reasons:
    - (i) The use is within an existing dwelling that is properly sited on the property and complies with all setback requirements. The dwelling has been on the property for many years without noted complaints. It's outward appearance will be no different from many of the neighboring properties.
    - (ii) The use within the existing dwelling structure will not create a substantial adverse effect on the neighborhood.
    - (iii) There will not be significant additional traffic generated by the use.
    - (iv) The property is served by Sussex County sewer.
    - (v) There was no compelling, specific evidence or testimony that the use would substantially adversely affect the values of the surrounding or nearby properties.
    - (vi) While there was opposition to the special use exception, the opposition stated that their opposition related to the location of the existing pole building. Because the pole building is in a legal

location on the lot, this is not a reason to deny the special use exception.

(vii) The use of the existing dwelling structure as a garage/studio apartment will not change the outward appearance of the structure.

25. Based on the findings above and the testimony and evidence presented during the Public Hearing and contained in the Public Record, the Board determined that the variance of 9 feet from the 40 foot front yard setback should be granted. The findings below support the Board's decision to grant the variance:

- (a) The property is unique due to the triangular shape of the property and the fact that the dwelling has been in existence since the 1950s. These conditions have created an unusually shaped building envelope and these conditions have created an exceptional practical difficulty for the Applicant.
- (b) The deck that creates the need for the variance is currently in existence and has not created any issues for neighbors, roadways or the community.
- (c) Due to the unique situation, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Applicant seeks to retain an existing deck. The Board is convinced that the variance is necessary to enable the reasonable use of the Property as the variance will provide the Applicant with a reasonable deck to access the existing dwelling. When reviewing the drawings of the property, it is clear that the deck is reasonable in size, shape, and location.
- (d) The exceptional practical difficulty was not created by the applicant. There was no evidence that the Applicant created the lot and its unique shape. This unique condition has created an unusually shaped and limited building envelope. These conditions have created the exceptional practical difficulty for the Applicant who seeks to retain a reasonably sized deck on the lot. The Applicant also did not develop the lot with the existing dwelling or place the deck on the lot.
- (e) 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 Board is convinced that the deck will have no effect on the character of the neighborhood. No evidence was presented that the variance would somehow alter the essential character of the neighborhood.
- (f) The variance is the minimum necessary to afford relief and the variance requested represents the least modification possible of the regulation at issue. The Applicant has demonstrated that the variance sought will allow the Applicant to retain a reasonably sized deck on the Property. The deck is located adjacent to the existing dwelling and there is no other place where it could reasonably be located. No additions or modifications to the deck are proposed.
- (g) Although there were parties present in opposition to the special use exception, they testified that they had no objection to the front yard variance application.

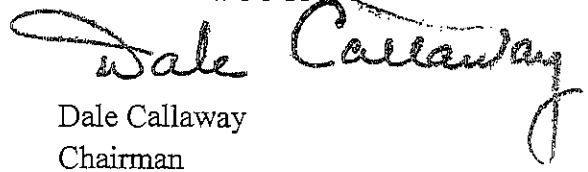
Based on the foregoing, the Board approved the special use exception for a garage/studio apartment and a variance from the front yard setback.

#### Decision of the Board

Upon motion duly made and seconded, the special use exception for a garage/studio apartment and a variance from the front yard setback pursuant to Sections 115-23, 115-25, 115-182, and 115-210 of the Sussex County Zoning Code were approved. The Board

Members in favor of the approval were Mr. Dale Callaway, Mr. John Mills, Mr. Bruce Mears, Mr. Brent Workman and Ms. Ellen Magee.

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 July 10, 2018