

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: APPLE ELECTRIC, C/O LISA PRESTIPINO

(Case No. 12223)

A hearing was held after due notice on November 5, 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 rear yard setback requirement for a proposed and existing structures.

Findings of Fact

The Board found that the Applicant is seeking a variance of twenty (20) feet from the rear yard setback requirement of thirty (30) feet for a proposed building. This application pertains to certain real property located on the northwest side of John J. Williams Highway (Route 24), approximately 1,589 feet southwest of Coastal Highway (Route 1) (911 Address: 18854 John J. Williams Highway, Rehoboth Beach); said property being identified as Sussex County Tax Map Parcel Number 3-34-12.00-89.00.

1. The Board was given copies of the Application, a survey of the Property, 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 Lisa Prestipino was sworn in to testify about the Application.
4. The Board found that Ms. Prestipino testified that the Property is unique because it is zoned commercial but surrounded by residential properties. The standard rear yard setback requirement for commercial properties is 5 feet but, due to the residential properties to the rear of the Property, the setback requirement is 30 feet and does not allow enough space for the building.
5. The Board found that Ms. Prestipino testified that the proposed, one-story pole building will be used to store equipment. The lean-to attached to the building will be used to store ladders. The existing garage will be removed to provide access to the new building and additional parking.
6. The Board found that Ms. Prestipino testified that the Property cannot be otherwise developed without a variance as there is nowhere else suitable on the Property to place this building. The Applicant has explored other options.
7. The Board found that Ms. Prestipino testified that neighboring properties are zoned residential but are used for Tidewater Utilities and Maplewood Dentist.
8. The Board found that Ms. Prestipino testified that the proposed building will be more aesthetically pleasing to the neighbors.
9. The Board found that Ms. Prestipino testified that granting this variance will not alter the character of the neighborhood as there are commercial buildings on either side and the proposed structure will not be visible from the road.
10. The Board found that Ms. Prestipino testified that there is a wooden fence in the rear of the Property. The Applicant will retain the trees in the rear yard to provide a buffer.
11. The Board found that Ms. Prestipino testified that the Property is located adjacent to Route 24.
12. The Board found that Ms. Prestipino testified that the basement entrance to the existing building limits the placement of the pole building.
13. The Board found that Ms. Prestipino testified that they have received no complaints from neighbors about their business.

14. The Board found that Ms. Prestipino testified that no lights will project onto neighboring properties.
15. The Board found that no parties appeared in support of or 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 small building envelope. While the Property consists of over 20,000 square feet, a significant portion of the Property is unbuildable due to the 60 feet front yard setback requirement from Route 24 and the 30 feet rear yard setback requirement from residential properties to the rear. The site is improved by a garage, which encroaches into the rear yard setback area. The Applicant intends to remove the garage and replace it with a larger pole building. Due to the limited building envelope, however, the Applicant is unable to locate the pole building on the site without encroaching into the setback areas. The Board finds that the lot's unique conditions have created an exceptional practical difficulty for the Applicant who seeks to construct a 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 and limited buildable area. The Applicant seeks to replace its garage with a pole building but is 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 reasonably sized pole building to be constructed 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. The Board notes that the pole building will be used to store the Applicant's equipment related to its business.
 - c. The exceptional practical difficulty was not created by the Applicant. The Applicant did not create the unusual building envelope of the Property and the small 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 by the lot's unique characteristics. The Board also notes that the entrance to the basement of the main building limits the placement of the pole building away from the rear yard property line.
 - 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 Board is convinced that the pole building will have no effect on the character of the neighborhood. The pole building will be located to the rear of the Property but an existing privacy fence and trees will be retained. There was no evidence that the location of the pole building in the rear yard setback area would somehow affect the neighborhood and no evidence was presented that the variance would somehow alter the essential character of the neighborhood. The lack of opposition is telling since the existing garage also encroaches into the setback area.
 - e. The variance sought is the minimum variance necessary to afford relief and the variance requested represent the least modification possible of the

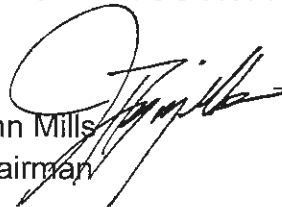
regulation at issue. The Applicant has demonstrated that the variance sought will allow the Applicant to construct a reasonably sized pole building on the Property. The Applicant will be removing an encroaching garage and looked at other options to locate the pole building on the site.

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


John Mills
Chairman

If the use is not established within two (2) years from the date below the application becomes void.

Date January 8, 2019