

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: KEVIN W. CLEAR

(Case No. 12260)

A hearing was held after due notice on January 28, 2019. 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 for existing structures.

Findings of Fact

The Board found that the Applicant is seeking a variance of 1.9 feet from the forty (40) feet front yard setback requirement for a pole building and a variance of 1.7 feet from the five (5) feet side yard setback requirement on the southeast side for an existing shed. This application pertains to certain real property located on the south side of Daisey Road approximately 746 feet east of Honeysuckle Road (911 Address: 34582 Daisey Road, Frankford) said property being identified as Sussex County Tax Map Parcel Number 5-33-6.00-125.00.

1. The Board was given copies of the Application, a survey of the property dated November 15, 2018, a building permit application, 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 Kevin Clear was sworn in to testify about the Application.
4. The Board found that Mr. Clear testified that he hired a builder to construct a pole building. The builder staked the Property but then went out of business. He then hired another company to complete the pole building and that company built based on the layout by the original company. After construction was completed, the encroachment into the front yard setback area was discovered
5. The Board found that Mr. Clear testified that there was previously a 100 year old building on the site where the pole building was constructed. The older building was only 17 feet from the front property line.
6. The Board found that Mr. Clear testified that the neighbors support the Application and he has received no complaints about the building.
7. The Board found that Mr. Clear testified that the Property is unique because it is long and narrow.
8. The Board found that Mr. Clear testified that the Property could not otherwise be developed as the septic system is on the other side of driveway.
9. The Board found that Mr. Clear testified that the exceptional practical difficulty was not created by the Applicant as he relied on the company he hired to follow setbacks.
10. The Board found that Mr. Clear testified that the variance will not alter the character of the neighborhood as pole building already exists.
11. The Board found that Mr. Clear testified that the shed will be moved into compliance with the Code so no side yard variance is needed.
12. The Board found that Mr. Clear testified that the variance requested is the minimum variance to afford relief.
13. The Board found that Mr. Clear testified that there is approximately 12 feet from the front property line to the edge of paving.
14. The Board found that two (2) parties appeared in support of and no one in opposition to the Application.

15. 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 for the variance for the pole building met the standards for granting a variance. The findings below further support the Board's decision to approve the Application for the variances for that structure.
- a. The Property is unique due to its size and shape. The Property is long and narrow. These 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. The Board also notes that the location of the septic system within the building envelope further limits the developable 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 size and the buildable area thereof is limited due to its size, shape, and location of the septic system. The Applicant seeks to retain an existing pole building on the lot 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 a reasonably sized existing pole building to remain on the lot. The Board is convinced that the shape and location of this structure is 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 size and shape of the Property. These conditions have resulted in a limited building envelope on the Property and the small building envelope has created the exceptional practical difficulty. The narrow building envelope was further limited by the location of the septic system. 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 Applicant relied on a builder to construct the pole building in compliance with the Code only to later discover the error.
 - 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 replaced a prior structure which had been on the Property for approximately 100 years and the pole building is located farther from the road than the prior building. The Board notes that there were no complaints noted complaints in the record about either structure. Furthermore, no evidence was presented that the variance would somehow alter the essential character of the neighborhood. The lack of evidence is telling since, if the pole building had somehow altered the essential character of the neighborhood, the Board would expect some evidence thereof. The Board also notes that there is approximately 12 feet from the front property line to the edge of paving of Daisey Road so the encroachment into the setback area is likely difficult to notice without a survey.
 - 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 Applicant has demonstrated that the variance

sought will allow the Applicant to retain an existing pole building. No additions or modifications to the existing pole building are proposed.

The Board approved the variance application for the pole building finding that it met the standards for granting a variance.

Decision of the Board

Upon motion duly made and seconded, the variance application for the pole building was approved. The Board Members in favor of the motion to approve 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 March 5, 2019