

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: MICHAEL S. MEARS

(Case No. 12267)

A hearing was held after due notice on February 4, 2019. The Board members present were: Mr. Dale Callaway, Ms. Ellen Magee, Mr. John Mills, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for variances from the rear yard setback requirement for an existing structure.

Findings of Fact

The Board found that the Applicants are seeking a variance of 10.9 feet from the twenty (20) feet rear yard setback requirement for an existing pole building and a variance of 10.8 feet from the twenty (20) feet rear yard setback requirement for an existing pole building. This application pertains to certain real property located on the north side of Paradise Road approximately 0.25 miles west of Governor Stockley Road (911 Address: 22159 Paradise Road, Georgetown); said property being identified as Sussex County Tax Map Parcel Number 1-33-10.00-10.16.

1. The Board was given copies of the Application, a survey of the Property dated December 12, 2018, a building permit application, a contract for the pole building, 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 Michael Mears and Michelle Mears were sworn in to give testimony about the Application.
4. The Board found that Mr. Mears testified that he contracted with Delmarva Pole Building to build the pole building and he requested that the building be placed in the northeast corner of the Property.
5. The Board found that Mr. Mears testified that, due to the placement of the well and septic, it was necessary to place the pole building in the northeast corner of the Property.
6. The Board found that Mr. Mears testified that the builder obtained the permit and did not follow setback requirements and the Applicants relied on the builder to follow setbacks and to comply with Sussex County Code. The Applicants were not aware that setbacks were not followed until the building was complete.
7. The Board found that Mr. Mears testified that the contractor advised him that the rear yard setback requirement was 10 feet.
8. The Board found that Mr. Mears testified that the building is for personal use.
9. The Board found that Mr. Mears testified that there have been no complaints from neighbors.
10. The Board found that Mr. Mears testified that it would be a financial burden on the Applicants to move the building.
11. The Board found that Mr. Mears testified that the variances requested are the minimum variances necessary to afford relief.
12. The Board found that Mrs. Mears testified that the Applicants never received a copy of the permit until the building was complete.
13. The Board found that Mrs. Mears testified that the building is on a concrete pad.
14. The Board found that Mr. Mears testified that the well is located in the front yard and the septic system is on the northwest side of the lot and takes up a large part of the building envelope.

15. The Board found that no one appeared in support of or in opposition to the Application.
16. The Board voted to leave the record open for a subpoena to be issued to the builder to explain why the setback requirements were not followed. The hearing was scheduled for March 4, 2019. At the hearing on March 4, 2019, no one appeared in answer to the subpoena. In addition, no one appeared in support of or in opposition to the Application.
17. 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 as it is developed by a septic system and well which take up a significant portion of the building envelope. The lot's unique conditions limit the buildable area available to the Applicants and have created an exceptional practical difficulty for the Applicants who seek to retain a pole building on the lot. The situation is also unique as the Applicants relied on a builder to install the pole building on the lot in compliance with the Sussex County Zoning Code only to later discover the error. The builder, not the Applicants, obtained the building permit.
 - 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 limited buildable area due to the location of the septic system and well on the lot. The Applicants seek to retain a pole building but are 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 reasonably sized pole building to be retained 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 Applicants. The pole building will be used for personal use.
 - c. The exceptional practical difficulty was not created by the Applicants. The location of the septic system and well have greatly limited the building envelope available to the Applicants. The Board is convinced that the exceptional practical difficulty was not created by the Applicants but was created by the lot's unique characteristics. The Applicants also relied on their builder to construct the pole building in compliance with the Code only to later discover the encroachment. The builder obtained the building permit and advised the Applicants of the incorrect setback requirement for the lot.
 - 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 pole building is located to the rear of the Property and the neighbor to the rear did not note an objection to the request in the record. 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 variances would somehow alter the essential character of the neighborhood.
 - 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 Applicants have demonstrated that the variances sought will allow the Applicants to retain a reasonably sized pole

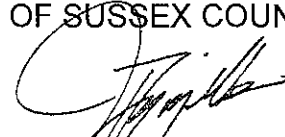
building on the Property. No additions or modifications to the pole building are proposed.

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, Ms. Ellen Magee, and Mr. Brent Workman. No Board Member voted against the Motion to approve the variance application. Mr. John Mills and Mr. John Williamson did not participate in the vote on this 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 April 2, 2019.