

## BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: ROBERT MURRAY, JR.

(Case No. 12299)

A hearing was held after due notice on May 6, 2019. The Board members present were: Mr. Dale Callaway, Ms. Ellen Magee, Mr. John Mills, Mr. John Williamson, and Mr. Brent Workman.

### Nature of the Proceedings

This is an application for a variance from the front yard setback requirement for an existing structure.

### Findings of Fact

The Board found that the Applicant is requesting a variance of 7.2 ft. from the forty (40) feet front yard setback requirement for an existing garage. This application pertains to certain real property located on the northwest side of Catmans Road approximately 0.45 miles southwest of DuPont Boulevard (Route 113) (911 Address: 28900 Catmans Road, Frankford); said property being identified as Sussex County Tax Map Parcel Number 4-33-11.00-4.11.

1. The Board was given copies of the Application, a building permit application, a survey of the Property dated January 30, 2019, 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 the Application or in opposition to the Application.
3. The Board found that Robert Murray was sworn in to give testimony about the Application.
4. The Board found that Mr. Murray testified that he worked with a builder to construct a pole barn last summer. Mr. Murray obtained the permit and provided it to his builder.
5. The Board found that Mr. Murray testified that the Property is unique due to its shape and the curved property line. The side property line is angled.
6. The Board found that Mr. Murray testified that the building envelope is limited.
7. The Board found that Mr. Murray testified that his parents live next door.
8. The Board found that Mr. Murray testified that the Property cannot be otherwise developed with a pole barn because there is no other location on the Property to place the barn.
9. The Board found that Mr. Murray testified that the septic and peat moss system is in the rear of the dwelling.
10. The Board found that Mr. Murray testified that the house was built in 2007.
11. The Board found that Mr. Murray testified that the builder had a greater concern about compliance with the side yard setback than the front yard setback.
12. The Board found that Mr. Murray testified that there are 12 houses on the road and the variance will not alter the essential character of the neighborhood as there are many pole barns in the area.
13. The Board found that Mr. Murray testified that the pole barn does not present a visibility issue.
14. The Board found that Mr. Murray testified that the front corner of the pole barn is near the driveway and complies with the setback requirements.
15. The Board found that Mr. Murray testified that the exceptional practical difficulty was not caused by the Applicant because he relied on his builder.

16. The Board found that Mr. Murray testified that the variance requested is the minimum request to bring the Property into compliance with the Code.
17. The Board found that Mr. Murray testified that there is 10 to 12 feet from the front property line to the edge of paving of Catmans Road. There is approximately 46 feet from the building to the edge of paving.
18. The Board found that Gary Sensenig from Pole Barns, Ltd. was sworn in to give testimony about the Application. Mr. Sensenig testified that he measured from the front of the building to the road and thought he was within the setbacks.
19. The Board found that no one appeared in support of or in opposition to the Application.
20. 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 odd shape. The Property has a curved front property line and a sharp angle to the east side of the Property. These conditions have created an unusually shaped building envelope that is further limited since the Property is improved by a septic system to the rear of the house. 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 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 shape and the buildable area thereof is limited due to its shape and location of the septic system. The Applicant seeks to retain a 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 reasonably sized pole building to remain on the lot. 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 size and shape of the Property. These conditions have resulted in a limited building envelope on the Property and the unusually shaped building envelope has created the exceptional practical difficulty. The unique 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. Furthermore, the Applicant relied on his builder to construct the pole building in compliance with the Sussex County Zoning Code only to later learn of the encroachment after the structure was built.
  - 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. Only a corner of the pole building encroaches into the setback area and the pole building likely poses no visibility issues with the adjacent road. Notably, there is approximately 46 feet from the edge of paving from Catmans Road to the pole building. As such, the front yard of the Property appears larger than it actually is. It is, thus, likely that the

encroachment would not be noticeable. No evidence was presented that the variance would somehow alter the essential character of the neighborhood.

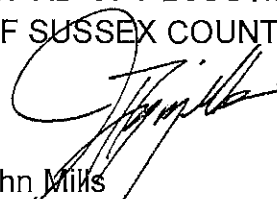
- e. The variance sought is the minimum variance necessary to afford relief and the variance requested represents the least modification possible of the regulation at issue. The Applicant has demonstrated that the variances sought will allow the Applicant to retain a pole building. No additions or modifications 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 of the Motion to approve were Mr. Dale Callaway, Ms. Ellen Magee, Mr. John Mills, Mr. John Williamson, 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 June 18, 2019.