

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: LARRY F. SILCOTT & FRANCES A. SILCOTT

(Case No. 12305)

A hearing was held after due notice on May 20, 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 variances from the front, side, and rear yard setback requirements for a proposed structure.

Findings of Fact

The Board found that the Applicants are requesting a variance of 2.8 feet from the forty (40) feet front yard setback requirement, a variance of 6.9 feet from the fifteen (15) feet side yard setback requirement on the north side, and a variance of 9.99 feet from the twenty (20) feet rear yard setback requirement for a proposed detached pole building. This application pertains to certain real property located on the east side of Bucks Branch Road approximately 0.39 miles north of Atlanta Road (911 Address: 20823 Bucks Branch Road, Seaford) said property being identified as Sussex County Tax Map Parcel Number 5-31-3.00-77.00.

1. The Board was given copies of the Application, a survey of the Property dated June 9, 2016, a letter to Robert Witsil, Esquire, dated November 22, 2016, findings of fact for Case No. 11838, 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 Larry Silcott was sworn in to give testimony about the Application.
4. The Board found that Mr. Silcott testified that he had a previously received approval for variances to construct the pole building but, due to health issues, the approval expired before the construction could commence.
5. The Board found that Mr. Silcott testified that he tore down two buildings on the Property and plans to replace them with a pole building measuring 40 feet by 50 feet. The building will be used to house his motor home, truck, and other items.
6. The Board found that Mr. Silcott testified that the Property has a unique shape being 118 feet at the north end and tapering to a very narrow point on the south.
7. The Board found that Mr. Silcott testified that, due to the shape of the Property, the north end of the lot is the only place where structures can be placed.
8. The Board found that Mr. Silcott testified that the surrounding area is rural and neighbors also have similar structures.
9. The Board found that Mr. Silcott testified that the Property cannot be developed for a pole building without a variance and this is the area with the least encroachments into setbacks.
10. The Board found that Mr. Silcott testified that the Applicants did not create the size and shape of the lot.
11. The Board found that Mr. Silcott testified that the variances will not alter the essential character of the neighborhood and that the neighbors do not oppose the Application.
12. The Board found that Mr. Silcott testified that there is a large space between the house on the neighboring property and the location of the pole building.
13. The Board found that Mr. Silcott testified that the pole building in this location will have the minimum impact on setbacks.

14. The Board found that Mr. Silcott testified that there is no difference between this application and the application filed in 2016.
15. The Board found that Mr. Paul Reiger was sworn in and testified in support of the Application.
16. The Board found that one person appeared in support of and no parties appeared 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 irregularly shaped and exceptionally narrow. The Property is 106.25 deep at its deepest point and is triangularly shaped. This shape has created an exceptionally small and oddly shaped building envelope. Consequently, the Applicants have limited area where they can place a new pole building. The existing sheds on the north side of the Property were old and needed to be replaced. It is clear to the Board that the lot's unique characteristics have created an exceptional practical difficulty for the Applicants who seek to build a new 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 is exceptionally narrow and oddly shaped. The existing sheds on the north side of the Property were old and needed to be replaced. While the size of the proposed pole building is larger than the existing sheds which have been removed, the pole building will encroach no farther into the rear yard and side yard setback areas than those sheds. The pole building also needs to be larger to accommodate the Applicants' motor home. The Applicants, however, are unable to build this pole building without violating the Sussex County Zoning Code. The Applicants have proposed to place this pole building at the deepest part of the Property but, due to the shallow depth and odd shape of the lot, the pole building still encroaches into the setback areas. The Board is convinced that the variances are necessary to enable the reasonable use of the Property as the variances will allow the Applicants to build the pole building on the Property. The Board is convinced that the size, shape, and location of the pole building are also reasonable, which is confirmed when reviewing the survey provided by the Applicants.
 - c. The exceptional practical difficulty was not created by the Applicants. The Applicants did not create the size and shape of the lot which limit the building envelope on the Property. The Property was created before the Applicants acquired the lot and the structures on the Property were placed thereon prior to the Applicants' acquisition thereof. Two of those structures have been removed and need to be replaced. 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 Applicants but was created the lot's unique characteristics.
 - 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. Sheds which also encroach into the setback areas on the Property for many years without a complaint noted in the record. The new pole building, while larger than the prior sheds, will not encroach further into the side yard or rear yard setback areas than those sheds. The surrounding

area consists of agricultural uses and the pole building will be consistent with those uses and the historical use of the Property. The Board was not convinced that a larger pole building on the Property would have any negative impact on the neighborhood. Furthermore, no evidence was presented which would indicate that the variances would somehow alter the essential character of the neighborhood or be detrimental to the public welfare.

- 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 construct a new pole building on the Property. The Board is convinced that the Applicants have taken appropriate measures to limit the intrusion of this pole building into the setback areas.

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.