

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: DENNIS T. RODGERS & MARY R. RODGERS

(Case No. 12335)

A hearing was held after due notice on July 15, 2019. The Board members present were: Dr. Kevin Carson, Mr. Jeff Chorman, Ms. Ellen Magee, 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 a proposed structure.

Findings of Fact

The Board found that the Applicants are requesting a variance of 20 feet from the thirty (30) feet front yard setback from Country Road for a proposed pole building. This property is located on the southwest side of Country Road and Shortly Road (911 Address: 20843 Country Road, Georgetown); said property being identified as Sussex County Tax Map Parcel Number 1-33-5.00-33.19. After a public hearing, the Board made the following findings of fact.

1. The Board was given copies of the Application, a construction plan of the Property dated September 6, 2016, a photograph of the site, 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 Dennis Rodgers and Mary Rodgers were sworn in to give testimony.
4. The Board found that Mr. Rodgers testified that the Applicants plan to construct a two-car garage that will line up with the existing driveway. The Applicants originally planned to construct a garage measuring 40 feet by 30 feet but they reduced the size to 30 feet by 36 feet.
5. The Board found that Mr. Rodgers testified that the Property is unique as the house faces Shortly Road but is addressed on Country Road. According to the Applicants, the house was constructed with the idea that Shortly Road was the front yard and Country Road was the corner front yard; though the driveway comes from Country Road.
6. The Board found that Mr. Rodgers testified that the only logical area on the Property to place this pole barn would be the proposed location of the building.
7. The Board found that Mr. Rodgers testified that the exceptional practical difficulty was not created by the Applicants.
8. The Board found that Mr. Rodgers testified that there is a ditch and septic system on the Property which limited the placement of the house.
9. The Board found that Mr. Rodgers testified that that the placement of the proposed pole barn will not affect or alter the character of the neighborhood or impact future development of adjoining properties nor be an impact to public welfare.
10. The Board found that Mr. Rodgers testified that the variance requested is a minimum variance to afford relief. The Applicants have reduced the size of the proposed structure.
11. The Board found that Mr. Rodgers testified that well and septic system had to be separated.

12. The Board found that Betty Marker and Ralph Clausen, who are neighbors, were sworn in to give testimony in opposition to the Application. Ms. Marker and Mr. Clausen expressed concerns about flooding related to the construction of the pole barn and opposed the construction on those grounds. They both testified, however, that they did not oppose the construction provided that the pole barn was not constructed in the swale on the Property.
13. The Board found that Ms. Rodgers testified that there is no tax ditch committee for this area and she has called regarding this issue. She removes garbage from the ditch regularly.
14. The Board found that one person appeared in support of and two parties 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 weighed and considered, the Board determined that the application for the variance 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 a corner lot with a swale bisecting a portion of the lot. This swale greatly restricts the building envelope and the building envelope is further reduced by the corner yard setback requirements. While Country Road is considered the front yard, the corner yard setback is located off Shortly Road, which is a road with much more traffic. Country Road is a dead-end road which serves very few properties. As such, the house is located away from Shortly Road. The Property is also subject to tax ditch setback requirements which further limit the developable area of the lot. These conditions greatly restrict the building envelope on the Property and it is clear to the Board that the lot's unique characteristics have created an exceptional practical difficulty for the Applicants who seek to construct a reasonably sized 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 bordered on two sides by roads and has unique setback requirements. The lot has other conditions, as stated above, which further limit the building envelope as well. The Applicants seek to construct a reasonably sized pole building but are 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 the Applicants to construct a reasonably sized pole building 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 Board also notes that the Applicants were constrained as to the location of the building due to the location of the driveway.
 - c. The exceptional practical difficulty was not created by the Applicants. There was no evidence that the Applicants created the lot or enacted the setback requirements which have limited the building envelope of the lot. The lot clearly has unique conditions due to the location of the swale and tax ditch which greatly limit the building envelope. These conditions clearly presented challenges for the Applicants in reasonably developing the Property. 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 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 a reasonable distance from the adjacent Country Road, which is a lightly traveled road. The Applicants propose to locate the pole building outside the swale area so the concerns by the opposition are addressed by that location. No evidence was presented by the opposition which convinced the Board that the variance would somehow alter the essential character of the neighborhood or be detrimental to the public welfare.

- 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 Applicants have demonstrated that the variance sought will allow the Applicant to construct a reasonably sized pole building on the Property. The Board notes that the pole building has been reduced in size to minimize the need for the variance.

The Board granted the variance application finding that the variance application 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. Jeffrey Chorman, Ms. Ellen Magee, Mr. John Williamson, and Mr. Brent Workman. Dr. Kevin Carson voted against the Motion to approve the variance application.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY



Ellen M. Magee
Chair

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

Date September 10, 2019