

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: DICK ENNIS

(Case No. 12499)

A hearing was held after due notice on November 16, 2020. 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 side yard setback requirements for a proposed structure.

Findings of Fact

The Board found that the Applicant is requesting a variance of 10 feet from the fifteen (15) feet side yard setback requirement on the south side for a proposed detached garage. This application pertains to certain real property located on the southeast corner of the intersection of Angola Road and John J. Williams Highway (Route 24) (911 Address: 22357 John J. Williams Highway, Lewes); said property being identified as Sussex County Tax Map Parcel Number 2-34-11.00-56.03. After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, an aerial photograph of the Property, a consolidation plan dated March 22, 2018, drawings, a survey dated March 14, 2011, 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 Richard Ennis was sworn in to testify about the Application.
4. The Board found that Mr. Ennis testified that he has owned the Property for a number of years and that he now has an opportunity to build on the Property. He seeks to build a pole building for boat maintenance and boat detailing and the building will measure 50 feet by 50 feet.
5. The Board found that Mr. Ennis testified that the building will help during inclement weather as it will allow him to work inside.
6. The Board found that Mr. Ennis testified that the building will aesthetically pleasing.
7. The Board found that Mr. Ennis testified that the Property is unique because it is a corner lot with an irregular shape and limited space and it slopes towards Angola Road.
8. The Board found that Mr. Ennis testified that there is flooding on a portion of the Property.
9. The Board found that Mr. Ennis testified that turning a boat onto the lot is a safety concern.
10. The Board found that Mr. Ennis testified that the Applicant has practiced the best location for the proposed building using a boat on a trailer being towed by a truck for turning radius. He believes that the best location was close to the home office, which is on the adjacent parcel. He had a plan to combine both parcels but he has abandoned that plan.
11. The Board found that Mr. Ennis testified that the adjacent property is also owned by the Applicant so the variance, if granted, will not substantially affect any neighbors.
12. The Board found that Mr. Ennis testified that he needs shelter from the weather when performing boat repairs.
13. The Board found that Mr. Ennis testified that the building will have an alarm system.
14. The Board found that Mr. Ennis testified that the Property slopes about 5-6 feet towards Angola Road and this was the only high ground for the pole barn.

15. The Board found that Mr. Ennis testified that another entrance off Route 24 would not work for turning radius.
16. The Board found that Mr. Ennis testified that granting the variance will not alter the essential character of the neighborhood as there are many barns in the area.
17. The Board found that Mr. Ennis testified that this is the minimum variance to allow this building to be placed in the most ideal location for the business.
18. The Board found that Mr. Ennis testified that he has an agreement with his neighbor for accessing the Property through an easement.
19. The Board found that Mr. Ennis testified that there is a shed and a boat lift close to Angola Road.
20. The Board found that Mr. Ennis testified that the shed will be removed when the pole building is constructed.
21. The Board found that Mr. Ennis testified that testified that the exceptional practical difficulty is being caused by the Applicant.
22. The Board found that no one appeared in support of or opposition to the Application.
23. 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 failed to meet the standards for granting a variance. The findings below further support the Board's decision to deny the Application.
 - a. The Applicant failed to demonstrate that there was a unique condition of the Property which created an exceptional practical difficulty. The lot consists of approximately one acre and is a large lot currently used for a boat yard. The Applicant has limited structures on the lot. While the Applicant testified that the lot slopes towards Angola Road, the Board was not convinced that the lot was so unique that it created an exceptional practical difficulty for the Applicant to develop the lot. Rather, the Applicant admitted that he was creating the exceptional practical difficulty.
 - b. The Applicant failed to prove that a reasonably sized pole building could not be built in strict conformity with the Sussex County Zoning Code. The Applicant proposes to construct a new pole building on this lot and the pole building will encroach into the side yard setback area. The Applicant failed to demonstrate that there was no other way to reasonably develop the lot without a variance. In this case, the lot is essentially a blank slate upon which the Applicant may develop the lot in compliance with the Code. The Board was simply not convinced that the Applicant could not otherwise place a pole building on the Property in compliance with the Code. Perhaps the pole building would not be in the exact location where the Applicant wants it to be located but the Property appears to have a large enough building envelope for the Applicant to construct a reasonably sized pole building in compliance with the Sussex County Zoning Code. For these reasons, the Board finds that the Property could be developed in strict conformity with the Code and that the variance is not necessary to enable reasonable use of the Property.
 - c. The Board finds that the Applicant is creating its own exceptional practical difficulty by proposing to a construct a pole building which does not fit within the building envelope. The Applicant's decision to construct this pole building in this location is the reason for the need for a variance and has nothing to do with the size, shape, or condition of the Property. There is no unusual condition to the Property which has created this difficulty. The building envelope appears to otherwise be able to fit a pole building without the need for the variance. The Board was not convinced that the variance request was the product of a *need*. Instead, the variance request appears to be the product of a *want* as the Applicant seeks to build the pole building

as proposed for purposes of convenience, profit, and / or caprice. Since the Applicant can build a pole building that can comply the Sussex County Zoning Code, the need for the variance is something created by the Applicant's wants rather than an unusual physical condition relating to the Property. The Applicant has thus created his own exceptional practical difficulty. The Board also notes that the Applicant admitted he is creating his own exceptional practical difficulty.

- d. Since the variance is not necessary to enable the reasonable use of the Property, the Board also finds that the variance requested is not the minimum variance necessary to afford relief. Furthermore, the Board finds that no variance is needed to afford relief since there is space to build a reasonably sized pole building on the Property in compliance with the Sussex County Zoning Code.

The Board denied the variance application finding that it failed to meet the standards for granting a variance.

Decision of the Board

Upon motion duly made and seconded, the variance application was denied. The Board Members in favor of the Motion to deny were Mr. Jeffrey Chorman, Ms. Ellen Magee, Mr. John Williamson, and Mr. Brent Workman. Dr. Kevin Carson voted against the Motion to deny the variance application.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY



John Williamson
Acting Chair

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

Date January 25, 2021.