

**BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY**

**IN RE: MARK PERDUE**

**(Case No. 12500)**

A public hearing was held after due notice on December 14, 2020. The Board members present were: Dr. Kevin Carson, Mr. Jeff Chorman, Ms. Ellen Magee, and Mr. John Williamson.

Nature of the Proceedings

This is an application for variances from the front yard setback requirements for proposed and existing structures.

Findings of Fact

The Board found that the Applicant is requesting a variance of 6 feet from the thirty (30) feet front yard setback requirement for an existing shed, a variance of 10 feet from the thirty (30) feet front yard setback requirement for a proposed pole building, and a variance of 7.1 feet from the thirty (30) feet front yard setback requirement for an existing covered porch and ramp. This application pertains to certain real located on the east side of Sylvan Vue Drive within the Blackwater Cove Subdivision (911 Address: 34560 Sylvan Vue Drive, Dagsboro); said property being identified as Sussex County Tax Map Parcel Number 1-34-11.00-704.00. 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, letters from DNREC, letters supporting the Application, photographs, construction proposals, a survey of the Property dated August 16, 2018, and a portion of the tax map of the area.
2. The Board found that the Office of Planning & Zoning received three letters in support of and no correspondence in opposition the Application.
3. The Board found that Mark Perdue was sworn in to give testimony about the Application.
4. The Board found that Mr. Perdue testified that he purchased the Property in December 2019 and the shed, porch, and ramp were on the Property at that time.
5. The Board found that Mr. Perdue testified that the Property is unique as there is a tax ditch on the Property and the topography of the Property slopes off to the rear. He estimates that the lot slopes 4-6 feet towards the tax ditch.
6. The Board found that Mr. Perdue testified that the pole building cannot be placed to the rear of the dwelling due to the placement of the septic system, which is located in the rear yard.
7. The Board found that Mr. Perdue testified that the Sussex Conservation District has approved the pole building.
8. The Board found that Mr. Perdue testified that there is a setback requirement from the tax ditch as well.
9. The Board found that Mr. Perdue testified that the exceptional practical difficulty was not created by the Applicant but by the unique physical properties on the site.
10. The Board found that Mr. Perdue testified that there have been no complaints about the existing setback issues on the Property.
11. The Board found that Mr. Perdue testified that the variances will not alter the essential character of the neighborhood and the design will match the existing dwelling.
12. The Board found that Mr. Perdue testified that the variances requested are the minimum variance requests to afford relief.

13. The Board found that Mr. Perdue testified that there is an 8-9 foot gap between the edge of paving of Sylvan Vue Drive and the front property line and that there are no visibility issues from the road.
14. The Board found that Mr. Perdue testified that he has received no complaints about the shed.
15. The Board found that Mr. Perdue testified that the shed cannot be moved as it is on a concrete slab and has electricity.
16. The Board found that no one appeared in support of or 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 unrebutted, 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 in size, shape, and condition. The lot has an odd shape whereby the front of the lot is significantly wider than the rear of the property. As a result, much of the building envelope is located in the front of the lot. The lot has a side property line which sharply angled and thereby the building envelope is limited. The building envelope is further limited since the northeast side of the property has a tax ditch. An additional building setback from the tax ditch is required as well. The rear of the Property is used for a septic system so the Property is further limited. Additionally, the Property slopes significantly towards the tax ditch so the areas where a pole building are also limited. Ultimately, these conditions have created a small and unusually shaped building envelope where it is more desirable to build the lot closer to the front yard than the rear yard. These unique characteristics of this Property limit the buildable area available to the Applicant and have created an exceptional practical difficulty and unnecessary hardship for the Applicant who seeks to construct a pole building and to retain a shed, porch, and ramp on the lot.
  - b. The unnecessary hardship and exceptional practical difficulty are not being created by the provisions of the Sussex County Zoning Code.
  - c. 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 size, shape, and condition and the buildable area thereof is limited due to these conditions. The Applicant seeks to construct a pole building and to retain a shed, porch, and ramp on the lot but is unable to do so without violating the Sussex County Zoning Code. The Board is convinced that front yard variances are necessary to enable the reasonable use of the Property as the variances will allow the Applicant to retain the existing structures and to construct a reasonably sized pole building on the lot. The survey clearly demonstrates the challenges with building towards the rear of the lot.
  - d. The exceptional practical difficulty and unnecessary hardship were not created by the Applicant. The Applicant did not create the unusual conditions of the Property. The lot was developed by a prior owner and the Applicant did not acquire the Property until December 2019. The shed, porch, and ramp were on the lot at that time. Furthermore, the shape and conditions of the Property predate the Applicant's ownership of the lot, as evidenced by the survey prepared for a prior owner. The preexisting conditions have resulted in a limited building envelope on the Property and the small building envelope has created the exceptional practical difficulty. The small building envelope was further limited by slope of the lot, the tax ditch, and the septic system in the rear of 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 Applicant but was created by the lot's unique characteristics.

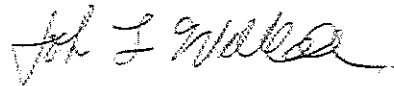
- e. The variances will not alter the essential character of the neighborhood nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare. The Board is convinced that the variances will have no effect on the character of the neighborhood. The variances will allow the Applicant to retain the existing porch, ramp, and shed and to build a reasonable pole building on the lot. The porch, ramp, and shed have been on the Property for some time with no complaints noted in the record. The pole building will encroach into the front yard setback area but there is a large gap between the edge of paving and the front property line so the encroachment will likely not be as noticeable. There was no evidence that the variances would somehow alter the essential character of the neighborhood or be detrimental to the public welfare.
- f. 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 Applicant has demonstrated that the variances sought will allow the Applicant to construct a pole building on the Property and to retain an existing porch, ramp, and shed. The porch and ramp are attached to the dwelling and cannot be relocated and the shed would be located on a concrete slab and has electric. Moving the shed is difficult, if not impossible. The Board is convinced that the Applicant otherwise looked at ways to develop the Property but was constrained by the unique conditions of the Property.
- g. The condition or situation of the Property and the intended use of the Property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the Sussex County Zoning Code.

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 Dr. Kevin Carson, Ms. Ellen Magee, and Mr. John Williamson. Mr. Jeffrey Chorman voted against the motion to approve Application. Mr. Brent Workman did not participate in the discussion or vote on this 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 February 15, 2021