

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: CLINT LUTZ & BLAIR LUTZ

(Case No. 12552)

A hearing was held after due notice on May 3, 2021. The Board members present were: Dr. Kevin Carson, Mr. Jeff Chorman, Mr. John T. Hastings, Mr. John Williamson, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for a variance from the side yard setback requirement for a proposed structure.

Findings of Fact

The Board found that the Applicants are requesting a variance of 6 feet from the fifteen (15) feet side yard setback requirement on the southwest side for a proposed structure. This property is located on the west side of East Trap Pond Road approximately 0.31 miles southwest of Parker Road (911 Address: 22842 East Trap Pond Road, Georgetown) said property being identified as Sussex County Tax Map Parcel Number 1-35-19.00-51.04. After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a survey of the Property dated September 17, 2007, construction drawings, 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 Clint Lutz was sworn in to testify about the Application.
4. The Board found that Mr. Lutz testified that the Property has a unique shape with an odd angle on the southwest side.
5. The Board found that Mr. Lutz testified that there is a shared driveway and the proposed pole building will be on the southwest side to line up with the driveway.
6. The Board found that Mr. Lutz testified that, if the pole building is placed 15 feet from the property line, it would be in the middle of the yard.
7. The Board found that Mr. Lutz testified that the placement of the septic system, which is located in the rear yard, also hinders the ability to meet the setback requirements.
8. The Board found that Mr. Lutz testified that the variance will not alter the essential character of the neighborhood as the driveway is shared with family members. He noted that his brother and sister-in-law live next door and that neighbors do not object to the request.
9. The Board found that Mr. Lutz testified that the variance is the minimum variance necessary to afford relief without losing some of the driveway or having to add additional impervious surface.
10. The Board found that Mr. Lutz testified that the building will be used for storage and indoor softball practice area for his children. He believes that a smaller building would not suit its intended purpose.
11. The Board found that Mr. Lutz testified that the structure will be parallel to the side property line.
12. The Board found that six people appeared in support of and no one appeared in opposition to the Application.
13. 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 for the variance met the standards for granting a variance. The findings below further support the Board's decision to approve the Application for the variance.

- a. The Property is unique due to its shape and development. The Property is 100 feet wide at the front yard but narrows towards the rear yard. The lot is served by a shared driveway which is located near the southwest property line. The Applicants seek to construct a pole building which will have access to that driveway. The lot is also improved by a septic system that is located in the rear yard. These conditions have created a limited building envelope and these conditions have created an unnecessary hardship and exceptional practical difficulty for the Applicants who seek to construct a pole building on the site.
- 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 unique physical characteristics and the buildable area thereof is limited due to those characteristics. The Applicants seek to construct a pole building on the lot 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 this reasonably sized pole building to be constructed on the lot. The Board is convinced that the shape and location of the structure is also reasonable, which is confirmed when reviewing the survey provided by the Applicants. The Board notes that the pole building will be used for storage and an indoor softball facility for the Applicants' children and the size of the pole building has been designed for those uses.
- d. The unnecessary hardship and exceptional practical difficulty were not created by the Applicants. As previously stated, the Property has unique conditions and these conditions have resulted in a limited building envelope on the Property. These conditions have created the unnecessary hardship and exceptional practical difficulty.
- e. 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 near a shared driveway and will run parallel to the side property line but will be located 9 feet off the property line. No evidence was presented which demonstrates that the variance would somehow alter the essential character of the neighborhood. Persons present at the hearing also indicated support for the proposal.
- f. 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 Applicants to construct a pole building on the Property. The size of the structure is reasonable and it has been designed to meet its intended purpose.
- 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 of the Motion to approve the variance were Dr. Kevin Carson, Mr. Jeffrey Chorman, Mr. Travis Hastings, 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 Williamson
Chair

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

Date July 12, 2021