

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: STEVE T. FITZGERALD

(Case No. 12559)

A hearing was held after due notice on May 17, 2021. The Board members present were: Dr. Kevin Carson, Mr. Jeff Chorman, Mr. Jordan Warfel, and Mr. John Williamson.

Nature of the Proceedings

This is an application for variances from the corner yard setback requirement for a proposed structure.

Findings of Fact

The Board found that the Applicant is seeking a variance of 6.5 feet from the fifteen (15) feet corner front yard setback requirement and a variance of 3.6 feet variance from the fifteen (15) feet corner front yard setback requirement for a proposed structure. This application pertains to certain real property located on the corner of Riverside Drive and Marjorie Drive within The Island Subdivision (911 Address: 9001 Riverside Drive, Seaford); said property being identified as Sussex County Tax Map Parcel Number 3-31-7.00-51.00. 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, a survey of the Property dated September 14, 2020, a septic plan site plan, photographs, letters of support, 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 to the Application.
3. The Board found that Steve Fitzgerald was sworn in to give testimony about the Application.
4. The Board found that Mr. Fitzgerald testified that the Property was previously improved by four attached sheds with skirting and that the sheds were dilapidated. According to Mr. Fitzgerald, two of the sheds have been removed and the other two sheds are in poor condition. He would like to replace the sheds with a garage / pole building of a similar size.
5. The Board found that Mr. Fitzgerald testified that the sheds totaled approximately 28 feet by 28 feet and were located on a concrete pad in the northwest corner of the lot. The concrete pad measures approximately 32 feet by 32 feet.
6. The Board found that Mr. Fitzgerald testified that the pole building will line up with the rear of the concrete pad to keep it away from Marjorie Drive and that the pole building will be no closer to the road than the existing sheds.
7. The Board found that Mr. Fitzgerald testified that he purchased this property approximately five years ago.
8. The Board found that Mr. Fitzgerald testified that the septic system is located behind the concrete pad and the garage cannot be built in compliance with County Code due to the location of the septic system.
9. The Board found that Mr. Fitzgerald testified that there is no opposition to the proposed garage from neighbors.
10. The Board found that Mr. Fitzgerald testified that there is approximately 10 feet to 12 feet between the property line and the edge of paving of Marjorie Drive. He does not believe that the pole building will present visibility issues.

11. The Board found that Mr. Fitzgerald testified that the proposed two-car garage will be used for storage.
12. The Board found that Mr. Fitzgerald testified that the proposed garage will be 10 feet tall.
13. The Board found that no one appeared in support of or in opposition to the Application.
14. 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 with conditions.
 - a. The Property is unique due to its size, shape, and development. The lot is a corner lot with an angled lot line along Marjorie Drive. As a result, the rear of the lot is narrower than the front of the lot. The Property was previously improved by four attached sheds which are dilapidated and need to be replaced. The Property is also improved by a septic system that is located in the building envelope. These conditions limit the area where a new storage building can be located. These conditions have created an unnecessary hardship and exceptional practical difficulty for the Applicant who seeks to build a pole building on the Property as noted above.
 - 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 Property and the situation, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Applicant seeks to construct a proposed pole building on the lot but is unable to do so while complying with the Sussex County Zoning Code. The Board is thus convinced that the variances are necessary to enable the reasonable use of the Property as the variances will allow the Applicant to construct the pole building on the lot. The Board is convinced that the size, shape, and location of the pole building are reasonable.
 - d. The unnecessary hardship and exceptional practical difficulty were not created by the Applicant. As discussed above, the Property has unique conditions which have limited the Applicant's ability to reasonably develop the Property. The Applicant did not create the unique conditions of the lot as he only acquired the lot five years ago. The Board was convinced that the Applicant has not created the exceptional practical difficulty and unnecessary hardship. Furthermore, the Board is convinced that the Applicant did not come to the Property with an illegal use in mind. Rather, the Applicant is limited by the physical conditions of the Property and he needs the variance in order to reasonably develop the Property as proposed. The Board also notes that the sheds are dilapidated and need to be replaced.
 - 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 place a reasonably sized pole building as proposed which will replace four dilapidated sheds. No substantial evidence was presented which demonstrated that the variances would somehow alter the essential character of the neighborhood or be detrimental to the public welfare. Moreover, neighbors submitted letters supporting the Application. The Board also notes that there is approximately 10-12 feet between the property line and the edge of paving

of Marjorie Drive so the encroachment is not as noticeable as it would be otherwise.

- f. The variances sought are the minimum variances necessary to afford relief and the variances requested represent the least modifications possible of the regulation at issue. The Applicant has demonstrated that the variances sought will allow the Applicant to place a reasonably sized pole building on the Property. The Board finds that the Applicant took reasonable measures to otherwise limit encroachments into the setback area but was constrained by the Property's unique conditions. The Board also notes that the Applicant will place the pole building as close to the center of the lot as possible while still remaining on the existing concrete pad. This proposal helps limit the encroachment into the corner front yard setback area.
- 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, Mr. Jeffrey Chorman, Mr. Jordan Warfel, and Mr. John Williamson. No Board Member voted against the motion to approve Application. Mr. Travis Hastings did not participate in the discussion or vote on this 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 August 2, 2021.