

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: DAVID BOWER

(Case No. 12562)

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 side yard and rear 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 and a variance of 10 feet from the twenty (20) feet rear yard setback requirement for a proposed structure. This application pertains to certain real property located on the southwest side of Mulberry Knoll Road approximately 0.25 miles northwest of John J. Williams Highway (Route 24) (911 Address: 19490 Mulberry Knoll Road, Lewes) said property being identified as Sussex County Tax Map Parcel Number 3-34-12.00-16.02. After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a portion of the tax map of the area, an aerial photograph of the Property, a letter in support of the Application, and a drawing of the Property dated March 20, 2021.
2. The Board found that the Office of Planning & Zoning received one letter in support of the Application and no correspondence in opposition to the Application.
3. The Board found that David Bower was sworn in to testify about the Application.
4. The Board found that Mr. Bower testified that he is requesting rear and side yard variances for the construction of a pole building measuring 30 feet by 32 feet and he intends to use the pole building to park his motorhome.
5. The Board found that Mr. Bower testified that the Property is unique as it is a narrow lot of measuring only 100 feet wide; which is narrower than the minimum lot size requirement in the AR-1 zoning district.
6. The Board found that Mr. Bower testified that the septic field is in the center of the rear yard.
7. The Board found that Mr. Bower testified that the uniqueness of the Property creates the building constraints on the lot.
8. The Board found that Mr. Bower testified that the pole building will be located in the rear corner of the lot so that he safely maneuver the motorhome to the pole building and also access the nearby road. He noted that, if the pole building was built in compliance with the Code, a sharp angle would result from the driveway and would make it difficult to park the motorhome. He also noted that the home was pushed closer to the rear yard to provide a safe distance from the sunroom.
9. The Board found that Mr. Bower testified that the location of existing lot improvements created the practical difficulty.
10. The Board found that Mr. Bower testified that the variances will not alter the essential character of the neighborhood as the closest neighbors have existing sheds and he is adjacent to an elementary school, the State Police station, and crop fields. He noted that neighbors do not object to the request.
11. The Board found that Mr. Bower testified that the house was built in 2000 by a prior owner.

12. The Board found that Mr. Bower testified that the rear yard is fenced in.
13. The Board found that Mr. Bower testified that these variances are the minimum variances requests to align the driveway with the building for safe ingress and egress of a motorhome.
14. The Board found that Mr. Bower testified that, if the pole building was built in compliance with the Code, he would have an extreme dogleg angle to turn the motorhome in order to park it in the pole building.
15. The Board found that Mr. Bower testified that the building will be 14 feet tall.
16. The Board found that no one appeared in support of or in 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 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.
 - a. The Property is unique due to its development, size, and historical use. The Property has been developed by a dwelling and a septic system. The home is located in the front center of the lot and the septic system is located in the rear yard but within the building envelope. The driveway to the property is located to the side of the house and there is a narrow strip measuring approximately 20 feet wide along the side of the lot where the driveway could be extended. The Applicant seeks to construct a pole building for the purpose of housing his motorhome but he is unable to locate it within the building envelope because of the location of the house, driveway, and septic system. The lot is also narrower than is required for a lot within the AR-1 zoning district so the lot's narrowness has also contributed to the difficulty experienced by the Applicant. These conditions have created a limited building envelope and are unique and have created an unnecessary hardship and exceptional practical difficulty for the Applicant who seeks to construct a pole building 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 situation and the Property, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Applicant seeks to place a pole building on the lot but is unable to do 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 reasonably construct the pole building so that it can be safely accessed by the motorhome. The Board is convinced that the size, shape, and location of the structure are reasonable. The Board notes that it is unlikely that the pole building could be located elsewhere on the lot due to the location of the home, driveway, and septic system.
 - 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 shape and size of the lot or place the house on the lot. 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 needs the variances in order to construct the proposed structure.

- 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 variances will have no effect on the character of the neighborhood. The proposed pole building will be located at the end of the Applicant's driveway and will be used to house a motorhome. If not for the pole building, the Applicant could otherwise park the motorhome even closer to the lot line than it will be with the pole building. There was no evidence that the pole building would alter the character of the neighborhood and the Board heard no substantial 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 reasonably sized pole building on the lot. The pole building is located such that the Applicant can safely maneuver a motorhome from the driveway to the pole building without sharp turns.
- 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 were Dr. Kevin Carson, Mr. Jeffrey Chorman, Mr. Jordan Warfel, and Mr. John Williamson. No Board Member voted against the Motion to approve the variance 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