

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: DOUGLAS TUCKER & KATHLEEN TUCKER

(Case No. 12598)

A hearing was held after due notice on August 16, 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 rear yard and side yard setback requirements for an existing structure.

Findings of Fact

The Board found that the Applicants are requesting the following variances: 1) a variance of 0.7 feet from the twenty (20) feet rear yard setback requirement for an existing pole building; 2) a variance of 1.7 feet from the fifteen (15) feet side yard setback requirement on the east side for an existing pole building; and 3) a variance of 1.3 feet from the fifteen (15) feet side yard setback requirement on the east side for an existing pole building. This application pertains to certain real property located on the north side of Bethel Road approximately 377 feet west of O'Neals Road (911 Address: 8185 Bethel Road, Seaford) said property being identified as Sussex County Tax Map Parcel Number 1-32-11.00-56.00. 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 survey of the Property dated June 22, 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 Douglas Tucker was sworn in to testify about the Application.
4. The Board found that Mr. Tucker testified that he had a pole building constructed on his property by Amish tradesmen.
5. The Board found that Mr. Tucker testified that he measured for the placement of the pole building but, due to the angle of the property line, he made an error regarding the placement. Prior to doing so, he spoke with his neighbor about where the property line was located but, after the survey was completed, he realized that they were both wrong as the survey showed the pole building as encroaching into the setback area.
6. The Board found that Mr. Tucker testified that there is a hedgerow between the subject property and the adjacent property and the Applicant thought that was the property line. Instead, according to Mr. Tucker, the hedgerow is on the adjacent neighbor's property a foot or two from the property line.
7. The Board found that Mr. Tucker testified that the property to the rear is an empty field.
8. The Board found that Mr. Tucker testified that the pole building could not be placed elsewhere on the Property as he was trying to keep it away from the drain field.
9. The Board found that Mr. Tucker testified that the Property is developed by a house and pool and is served by well and septic.
10. The Board found that Mr. Tucker testified that the building could not be moved as it is on a cement slab.
11. The Board found that Mr. Tucker testified that the adjacent neighbors are in support of the Application.

12. The Board found that Mr. Tucker testified that the variances requested are the minimum variances to allow the pole building to remain in its current location.
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.
 - a. The Property is unique due to its shape and development. The lot has an unusual shape with a narrow front yard and a wide rear yard. The Applicant built a pole building on the lot based on an incorrect assumption as to where the property line was located after speaking with his neighbor. Most of the pole building complies with the setback requirements but a small portion thereof does not. The Property is also improved by a septic system, which further limits the building envelope of the Property. These conditions have created an unnecessary hardship and exceptional practical difficulty for the Applicants who seek to retain the existing 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 retain an existing pole building on the lot but are unable to do so without violating the Sussex County Zoning Code. The Board is convinced that the variances are necessary to enable the reasonable use of the Property as the variances will allow this reasonably sized pole building to remain 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.
 - 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. Furthermore, the Applicants relied on the misunderstanding with a neighbor about the location of the lot line and that misunderstanding exacerbated the problems for the Applicants.
 - 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 pole building will have no effect on the character of the neighborhood. The pole building is a significant distance from neighboring lands and most of the pole building complies with the setback requirements. Due to the odd angle of the lot line, it is unlikely that the encroachment would be noticed otherwise. No evidence was presented which demonstrates that the variances would somehow alter the essential character of the neighborhood. Moreover, neighbors support the requests.
 - 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 Applicants have demonstrated that the variances sought will allow the Applicants to retain a reasonably sized pole building on the Property. No additions or modifications to the pole building are proposed.

- 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 October 18, 2021.