

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: ZCORP PROPERTY CONSULTANTS, LLC

(Case No. 12605)

A hearing was held after due notice on September 13, 2021. The Board members present were: Dr. Kevin Carson, Mr. Jeff Chorman, Mr. John T. Hastings, Mr. Jordan Warfel, and Mr. John Williamson.

Nature of the Proceedings

This is an application for variances from the side yard setback requirement for existing structures.

Findings of Fact

The Board found that the Applicant is requesting a variance of 1.3 feet variance from the fifteen (15) feet side yard setback requirement on the east side for an existing dwelling and a variance of 7.7 feet variance from the fifteen (15) feet side yard setback requirement on the east side for an existing pole building. This property is located on the north side of West Piney Grove Road approximately 966 feet west of Shortly Road (911 Address: 20499 West Piney Grove Road, Georgetown) said property being identified as Sussex County Tax Map Parcel Number 1-33-5.00-33.06. After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a survey dated July 20, 2021, property information, a lot line adjustment plan dated October 7, 2020, an older survey of the Property, 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 Barry Ziegler was sworn in to testify about the Application. Dan Conway, Esquire, appeared on behalf of the Applicant.
4. The Board found that Mr. Conway stated that two variances are being sought for the existing dwelling and pole building but the smaller shed shown in the rear of the Property on the survey will be removed so the west side of the Property will comply with setbacks. He also noted that the storage box shown as attached to the pole building will be removed.
5. The Board found that Mr. Conway stated that the pole building was existing when the Property was purchased by the Applicant.
6. The Board found that Mr. Conway stated that the foundation for the house was set and the house was permitted.
7. The Board found that Mr. Conway stated that, when the setback measurement was taken for the foundation the angle of the Property was not considered and that created the need for a variance.
8. The Board found that Mr. Ziegler affirmed statements made by Mr. Conway as true and correct.
9. The Board found that Mr. Ziegler testified that a new septic system was installed in the front of the house and a well was installed in the rear between the house and the pole building.
10. The Board found that Mr. Ziegler testified that there is a tax ditch to the rear of the Property.
11. The Board found that Mr. Ziegler testified that there have been no complaints about the location of the structures and that neighbors do not object to the request.
12. The Board found that Mr. Ziegler testified that the Property has now been sold and the new owners plan to remove the rear shed.

13. The Board found that Mr. Ziegler testified that the house was staked by Cotten Engineering.
14. The Board found that Mr. Ziegler testified that the property lines were adjusted which created the non-compliance of the pole building.
15. The Board found that Mr. Ziegler testified that he used to own the Property to the west and there was a driveway issue that led to the lot line adjustment.
16. The Board found that Mr. Ziegler testified that the pole building is approximately 40 years old.
17. The Board found that no one appeared in support of or in opposition to the Application.
18. 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 variances 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 size, shape, and development. The lot is a long but narrow lot which narrows significantly in the middle of the lot. The west side of the lot has an oddly shaped lot line which creates an unusual building envelope. The rear of the lot is also burdened by a tax ditch which limits the developability of the lot. The Property is developed with a house which slightly encroaches into the setback area. The pole building encroaches farther into the setback area but has been on the lot for approximately 40 years. These conditions have created a limited and unusually shaped building envelope and these conditions have created an unnecessary hardship and exceptional practical difficulty for the Applicant who seek to retain the dwelling and 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 and situation, 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 Applicant seeks to retain the dwelling and pole building on the Property but is 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 those structures to remain on the lot. The Board is convinced that the shape and location of the dwelling and pole building are also reasonable, which is confirmed when reviewing the survey provided by the Applicant.
 - d. The unnecessary hardship and exceptional practical difficulty were not created by the Applicant. As previously stated, the Property has unique conditions and these conditions have resulted in a limited building envelope of the Property. The Applicant also did not place the pole building on the lot. Rather, that structure has been on the Property for many years. The Applicant, who built the dwelling, also had the Property staked out prior to placing the dwelling but there was a builder error which resulted in a small portion of the house encroaching into the setback area. The Board also notes that the building envelope is limited due to the well and septic on the site. These conditions and the builder error have created the unnecessary hardship and exceptional practical difficulty.
 - 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 structures will have no effect on the character of the

neighborhood. No substantial evidence was presented that the structures would somehow alter the essential character of the neighborhood. The Board notes that the dwelling only slightly encroaches into the setback area and that the pole building has been on the lot for approximately 40 years without complaint noted in the record.

- 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 retain the structures on the lot. No additions or modifications are proposed. The Board notes that the Applicant will remove the storage box on the west side of the pole building to bring that side of the structure into compliance with the Code. The rear building will also be removed and, thus, reduce the degree of non-conformity of the lot. The Board notes that the east side of the dwelling was designed with an odd angle to fit the dwelling into the building envelope but there was a surveying error which resulted in a small portion of the dwelling encroaching into the setback area. The Board finds that the Applicant took reasonable measures to minimize the need for the variances.
- 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.
- h. This approval is subject to the following condition:
 - i. The building located to the rear of the Property shall be removed.

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. Jordan Warfel, and Mr. John Williamson. 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 November 1, 2021.