

**BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY**

**IN RE: W. SCOTT COLLINS**

**(Case No. 12612)**

A public hearing was held after due notice on September 20, 2021. The Board members present were: Mr. John T. Hastings, Mr. Jordan Warfel, and Mr. John Williamson.

Nature of the Proceedings

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

Findings of Fact

The Board found that the Applicant is requesting the following variances: 1) a variance of 7.8 feet from the forty (40) feet front yard setback requirement for an existing pole barn; 2) a variance of 30.7 feet from the forty (40) feet front yard setback requirement for an existing dwelling; 3) a variance of 35.8 feet from the forty (40) feet front yard setback requirement for an existing porch roof; 4) a variance of 31.1 feet from the forty (40) feet front yard setback requirement for an existing dwelling; and 5) a variance of 36.1 feet from the forty (40) feet front yard setback requirement for the existing porch roof. This application pertains to certain real located on the east side of Roxana Road approximately 0.27 miles southwest of Phillips Road (911 Address: 36617 Roxana Road, Selbyville); said property being identified as Sussex County Tax Map Parcel Number 5-33-10.00-65.00. 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 March 11, 2021, 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 or in opposition the Application.
3. The Board found that Ward Scott Collins was sworn in to give testimony about the Application.
4. The Board found that Mr. Collins testified that the pole barn was constructed near the northwest property line.
5. The Board found that Mr. Collins testified that he inherited the Property in 2015 and the land was reforested under a state program. He noted that there are forestry easements on the Property.
6. The Board found that Mr. Collins testified that the dwelling was built early 1900s by his grandparents.
7. The Board found that Mr. Collins testified that the measurement for the pole building was taken from the road instead of the property line in error.
8. The Board found that Mr. Collins testified that the road has been widened.
9. The Board found that Mr. Collins testified that the existing dwelling will be removed and the Applicant proposes to build a new dwelling in the future.
10. The Board found that Mr. Collins testified that the pole building measures 60 feet by 80 feet.
11. The Board found that Mr. Collins testified that the porch is just an overhang.
12. The Board found that Mr. Collins testified that the pole barn is used for storage of cars and tractors to prevent theft.
13. The Board found that Mr. Collins testified that the shed was placed after the pole barn was constructed.

14. The Board found that Mr. Collins testified that there are 2 tax ditches on the Property.
15. The Board found that Mr. Collins testified that he could not place the pole building in the rear yard.
16. The Board found that Mr. Collins testified that the new house will comply with the setback requirements.
17. The Board found that Mr. Collins testified that there is no well or septic but those systems will be required for the proposed dwelling.
18. The Board found that Mr. Collins testified that there are no complaints from neighbors.
19. The Board found that Mr. Collins testified that the pole barn does not create any visibility issues for motorists.
20. The Board found that Mr. Collins testified that the footer inspector did not notice the violation when the pole building was constructed.
21. The Board found that no one appeared in support of or in opposition to the Application.
22. 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 unrebutted, 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 size, shape, easements, and development. The Property is improved with a dwelling that was built in the early 1900s and a pole building that was constructed recently. The lot is a large parcel but is irregularly shaped and is burdened by tax ditches and forestry easements which greatly restrict the developability of the rear of the lot. These unique characteristics of this Property have created a limited building envelope and have created an unnecessary hardship and exceptional practical difficulty for the Applicant who seeks to retain existing structures 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 Applicant seeks to retain existing structures on the lot 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 these structures to remain on the lot. The Board is convinced that the shape and location of the structures 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 on the Property. These conditions 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. The structures have been on the Property for years and there was no substantial evidence that the structures would somehow alter the essential character of the neighborhood. The Board notes that no letters in opposition or testimony in opposition were presented to the Board. The

unrebutted testimony indicates that the structures present no visibility concerns along the adjacent road.

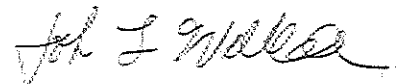
- f. The variances sought are the minimum variances necessary to afford relief and the variances requested represent the least modifications possible of the regulations at issue. The Applicant has demonstrated that the variances sought will allow the Applicant to retain the structures on the Property. No additions or modifications to those structures 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 were Mr. Travis Hastings, Mr. Jordan Warfel, and Mr. John Williamson. No Board Member voted against the motion to approve the Application. Dr. Kevin Carson and Mr. Jeffrey Chorman 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 November 15, 2021.