

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: NICHOLAS J. FLOMP, JR.

(Case No. 12632)

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

Nature of the Proceedings

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

Findings of Fact

The Board found that the Applicant is requesting the following variances:

1. A variance of 5.15 feet from the fifteen (15) feet side yard setback requirement on the east side for a proposed pole building; and
2. A variance of 4.73 feet from the fifteen (15) feet side yard setback requirement on the east side for a proposed pole building.

This property is located on the southeast side of Lavinia Street approximately 425 feet northeast of Sand Hill Road (911 Address: 15749 Lavinia Street, Milton) said property being identified as Sussex County Tax Map Parcel Number: 235-20.00-13.03 (hereinafter "the Property"). After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a site plan of the Property dated October 11, 2021, a drawing of the existing and proposed structures, photographs, a setback information request form, photographs, 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 one letter in support of and no correspondence in opposition to the Application.
3. The Board found that Nicholas Flomp was sworn in to testify about the Application.
4. The Board found that Mr. Flomp testified that he hired a contractor (Eastern Shore Pole Building) to build a pole barn on the Property and the contractor laid out the location for the building but brought to his attention that there was a setback issue necessitating a variance.
5. The Board found that Mr. Flomp testified that the Property is unique because of the location of the septic field as it limits access to the rear of the Property. He noted that he cannot drive over the septic system.
6. The Board found that Mr. Flomp testified that the power cable runs along the driveway and across to the rear of the home which further limits the placement of the pole building.
7. The Board found that Mr. Flomp testified that there is 120 foot tall oak tree on the Property that he does not want to remove and that there is a well pump near that tree as well. He believes that, if the pole building was put next to the tree, the roots of the tree would likely damage the building and concrete floor.
8. The Board found that Mr. Flomp testified that the property line runs at an angle and the driveway is not parallel to the side property line.
9. The Board found that Mr. Flomp testified that the Property is not in a subdivision but is near farmland. He does not believe that the proposed pole building will alter the essential character of the neighborhood or be visible from the road.
10. The Board found that Mr. Flomp testified that he purchased the Property with the dwelling in its current location.

11. The Board found that Mr. Flomp testified that he spoke with a neighbor who seemed supportive of the request but he was not definite.
12. The Board found that Mr. Flomp testified that the proposed pole building will be used as a two-car garage and also for storage of yard tools and equipment.
13. The Board found that Mr. Flomp testified that the structure is also needed for safety reasons as he works on centrifuges for wastewater and he wants the garage so that his wife can park in the garage at night when he travels for work.
14. The Board found that Mr. Flomp testified that the existing shed will be removed.
15. The Board found that Mr. Flomp testified that the variances requested are the minimum variances to afford relief.
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 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 variances.
 - a. The Property is unique due to its development by a prior owner, septic system, utilities, driveway, and large tree. The lot was developed by a prior owner with a house and the Applicant seeks to install a pole building for storage of vehicles and equipment. The Property has a septic system which occupies part of the building envelope and restricts reasonable access to parts of the Property because a vehicle cannot be driven over the septic system. The Property also has a large tree which further limits the building envelope. Moreover, the Property is burdened by utilities which also limit where this structure can be placed. The location of the existing driveway also limits the area where a pole building can reasonably be located. 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 seeks to construct the 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 construct the 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 variance will allow the Property to be developed with a reasonable pole building that will allow for storage of vehicles and equipment. The Board is convinced that the shape and location of the 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 create the conditions of the lot or develop the Property. Rather, the lot was developed by a prior owner. The Applicant was further limited by the location of the septic system and the lot's unique conditions. 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 structure will have no effect on the character of the neighborhood. No one appeared in opposition to the Application and there was no substantial evidence which convinced the Board that the proposed pole building would somehow alter the essential character of the neighborhood. The Board also notes that the pole building is located at the terminus of the existing driveway where a structure of this type would likely be located.

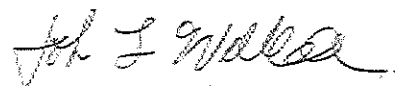
- f. The variances sought are the minimum variances necessary to afford relief and the variances requested represent the least modifications possible of the regulations at issue. The Applicant has demonstrated that the variances sought will allow the Applicant to construct a reasonably sized pole building on the lot which is suitable for the Applicant's needs. The Applicant was significantly constrained by the unique conditions of the lot and 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.

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, and Mr. John Williamson. No Board Member voted against the Motion to approve the variance application. Mr. Travis Hastings and Mr. Jordan Warfel 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 February 7, 2022.