

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: MICHAEL WALTON

(Case No. 12656)

A hearing was held after due notice on February 21, 2022. 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 a proposed structure.

Findings of Fact

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

1. A variance of 5.2 feet from the fifteen (15) feet side yard setback requirement on the west side for proposed addition to a pole barn; and
2. A variance of 2.8 feet from the fifteen (15) feet side yard setback requirement on the west side for proposed addition to a pole barn.

This property is located at the north side of Concord Road approximately 0.94 miles east Sussex Highway (Route 13) (911 Address: 10059 Concord Road, Seaford) said property being identified as Sussex County Tax Map Parcel Number 132-2.00-95.00 ("the Property"). After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a survey of the Property dated November 19, 2021, 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 Michael Walton was sworn in to testify about the Application.
4. The Board found that Mr. Walton testified that he had a tree fall on the east side of the Property onto a shed.
5. The Board found that Mr. Walton testified that, rather than rebuilding the shed, he would prefer to put an addition on to his pole barn.
6. The Board found that Mr. Walton testified that the Property is narrow as it is only 100 feet wide.
7. The Board found that Mr. Walton testified that he would have more room on his driveway by doing as proposed.
8. The Board found that Mr. Walton testified that the Property is not considered wetlands but is located adjacent to a river.
9. The Board found that Mr. Walton testified that his neighbor's pole barn is 3 feet from his property line.
10. The Board found that Mr. Walton testified that he would like to keep the same size structure as an addition to his pole barn, as a lean-to.
11. The Board found that Mr. Walton testified that the pole building and driveway existed on the lot when he purchased the Property.
12. The Board found that Mr. Walton testified that a 16 foot wide lean-to would be the minimum he needs to obtain relief. He intends to construct a 16 feet by 30 feet lean-to which will have a concrete floor and be used to store his boat and tractor.
13. The Board found that Mr. Walton testified that there is no safety concern with his pole building and his neighbor's pole building being close together.

14. The Board found that Mr. Walton testified that the lot is wooded again limiting his ability to build and that the structure cannot be placed elsewhere on the lot.
15. The Board found that Mr. Walton testified that his well is on the north side of the pole building and the septic system is on the north side of the house.
16. The Board found that Mr. Walton testified that he is moving the shed to obtain more relief on the other side on the Property.
17. The Board found that Mr. Walton testified that the pole building is not parallel to the lot line.
18. The Board found that no one appeared in support of or in opposition to the Application.
19. 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 variance 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 small building envelope and existing development. The Property is a long and narrow lot located on the Nanticoke River. The lot is heavily wooded and was improved by several buildings when the Applicant purchased the lot. Recently, a storm destroyed a shed and he now seeks to add an addition to the pole building to store his boat and tractor. The Property, however, is narrow thereby limiting the building envelope, which is further limited by the trees, well, and septic on the lot and the location of the driveway. The Board finds that the lot's unique conditions have created an unnecessary hardship and exceptional practical difficulty for the Applicant who seeks to construct an addition 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 lot, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property has a unique and limited buildable area. The Applicant seeks to construct a reasonable addition to the existing pole building but is unable to do so without violating the Sussex County Zoning Code. The Board is convinced that the variance is necessary to enable the reasonable use of the Property as the variance will allow a reasonably sized addition to be constructed on the Property. The Board is convinced that the shape and location of the addition are also reasonable, which is confirmed when reviewing the survey provided by the Applicant. The Board notes that the addition will be used to provide storage for the Applicant's boat and tractor.
 - 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 addition will have no effect on the character of the neighborhood. The addition will be located off the existing pole building. There was no substantial evidence that the addition 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.
 - 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 place the reasonably sized addition on the Property. The Board is convinced that the Applicant explored other options for the location of the addition but was constrained by the conditions of the lot.

- 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, 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 April 18, 2022