

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: STEVE MCCARRON

(Case No. 12672)

A hearing was held after due notice on March 21, 2022. The Board members present were: Mr. Jeff Chorman, Mr. John T. Hastings, Mr. Jordan Warfel and Mr. John Williamson.

Nature of the Proceedings

This is an application for a variance from the rear yard setback requirement for a proposed structure.

Findings of Fact

The Board found that the Applicant is requesting a variance of 15 feet from the twenty (20) feet rear yard setback requirement for a proposed detached garage. This application pertains to certain real property located on the north side of Earlee Avenue within the Passwaters Estates Subdivision (911 Address: 302 Earlee Avenue, Bridgeville) said property being identified as Sussex County Tax Map Parcel 131-10.20-113.00 ("the Property"). After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a portion of the tax map of the area, an aerial photograph of the Property, a survey of the Property dated January 12, 2022, and letters supporting the Application.
2. The Board found that the Office of Planning & Zoning received five (5) letters in support of and no correspondence in opposition to the Application.
3. The Board found that Steve McCarron was sworn in to testify about the Application.
4. The Board found that Mr. McCarron testified that he is requesting a variance in order to build a shop that will be used for personal use and not for commercial activity.
5. The Board found that Mr. McCarron testified that the shop measures approximately 44 feet by 56 feet and is a metal-sided building.
6. The Board found that Mr. McCarron testified that his neighbors do not object to the request.
7. The Board found that Mr. McCarron testified that he is requesting the variance in order to allow the remainder of his yard to be intact.
8. The Board found that Mr. McCarron testified that, if he changed the position of the building, he would have to remove lawn irrigation and a tree. He noted that the tree existed when he acquired the Property and is located between the two driveways. He believes that the tree adds character to the neighborhood.
9. The Board found that Mr. McCarron testified that there is a 12 foot grass alley behind the Property, which would place the proposed structure 17 feet from the neighbor's property line. He noted that the alley is blocked by trees on both ends rendering it unusable.
10. The Board found that Mr. McCarron testified that his paved driveway connects to his gravel driveway and is separated by the tree.
11. The Board found that Mr. McCarron testified that his yard is fenced in.
12. The Board found that Mr. McCarron testified that he has obtained letters of no objection from all adjacent neighbors, except for a vacant property and a rental property.
13. The Board found that Mr. McCarron testified that the home was built in 1974.
14. The Board found that Mr. McCarron testified that he will be moving the existing shed and does not need a variance for that structure.
15. The Board found that Mr. McCarron testified that this is the minimum size pole

building for him to be able to back a boat in. He does not believe he would be able to park his boat in a smaller structure. He noted that the pole building will also be used to store vehicles.

16. The Board found that Mr. McCarron testified that he would actually prefer to move the structure back farther on the Property but this is the minimum he is asking for.
17. The Board found that Mr. McCarron testified that the Property has a septic system which prevents him from building in the rear yard.
18. The Board found that Mr. McCarron testified that he looked at placing the pole building in the corner but he would not be able to fit his boat in that location and that, if he moved the location of the structure, it would actually stick out farther than where he is requesting to place it now.
19. The Board found that no one appeared in support of or in opposition to the Application.
20. 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 size, shape, and development. The Property consists is a wide lot measuring 249.99 feet wide but only 160.46 feet deep. The rear of the Property is adjacent to an unused alley so the rear of the lot appears larger than it actually is. The Applicant proposes to place a pole building on the Property but he is hindered by the location of a septic system, irrigation system, and tree that limit where the pole building could be effectively placed. These conditions have created a limited building envelope. The Board finds that the Property has unique conditions as aforesaid and that these conditions have created an unnecessary hardship and exceptional practical difficulty for the Applicant who seeks to construct a pole building 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 situation and the Property, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Applicant seeks to construct a pole building but is unable to do while complying with the Sussex County Zoning Code. The Board is thus convinced that the variance is necessary to enable the reasonable use of the Property as the variance will allow the Applicant to construct the pole building. The Board is convinced that the size, shape, and location of the pole building are reasonable. The Board notes that the pole building is large enough for the Applicant to park his boat and is farther from the rear property line than the Applicant preferred.
 - d. The unnecessary hardship and exceptional practical difficulty were not created by the Applicant. As discussed above, the Property has unique conditions which have limited the Applicant's ability to reasonably develop the Property. The Applicant did not create the unique conditions of the lot or place the dwelling, tree, or septic system on the lot. The Board was convinced that the Applicant has not created the exceptional practical difficulty and unnecessary hardship. Furthermore, the Board is convinced that the Applicant did not come to the Property with an illegal use in mind. Rather, the Applicant is limited by the physical conditions of the Property and needs the variance in order to reasonably use the rear portion of the lot.
 - e. The variance 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 proposed pole building will have no effect on the character of the neighborhood. Several neighbors have indicated support of the request and the pole building will be in a similar location as a shed. There was no substantial evidence that the pole building would alter the essential character of the neighborhood or be detrimental to the public welfare. The rear of the Property is also adjacent to an unused alley so the encroachment will not likely be as noticeable as it would be otherwise.

- f. The variance sought is the minimum variance necessary to afford relief and the variance requested represents the least modification possible of the regulation at issue. The Applicant has demonstrated that the variance sought will allow the Applicant to construct a reasonable pole building on the lot. The pole building has been set back enough to allow for the Applicant to reasonably access the pole building with a boat but is not closer to the rear property line than is necessary to afford that relief to the Applicant.
- 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 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. Dr. Kevin Carson 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 May 16, 2022