

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

**IN RE: SEAN MERLONGHI**

**(Case No. 12681)**

Hearings were held after due notice on April 18, 2022 and on May 2, 2022. The Board members present at the April 18, 2022, meeting were: Dr. Kevin Carson, Mr. Jeff Chorman, Mr. Jordan Warfel and Mr. John Williamson. Board members present at the May 2, 2022, meeting were Dr. Kevin Carson, Mr. Jeffrey Chorman, Mr. Travis Hastings, Mr. Jordan Warfel, and Mr. John Williamson.

Nature of the Proceedings

This is an application for a variance from the side yard setback requirement for a proposed pole building / garage.

Findings of Fact

The Board found that the Applicant is requesting a variance of 10 feet from the fifteen (15) feet side yard setback requirement on the northeast side for a proposed pole building. This property is located on the northwest side of New Lane within the New Road Estates Subdivision (911 Address: 5 New Lane, Lewes) said property being identified as Sussex County Tax Map Parcel Number 335-8.00-591.00 ("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 August 25, 2015, an email in support of the Application, 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 (1) letter in support of the Application and no correspondence in opposition to the Application.
3. At the hearing on April 18, 2022, Gary Merlonghi was sworn in to testify about the Application and he testified that the Applicant was out of the country and had difficulty calling into the call-in number.
4. Due to the Applicant's absence, the Board left the record open and rescheduled the hearing on the Application for May 2, 2022, at which time the Board held a second hearing and Sean Merlonghi was sworn in to testify about the Application.
5. The Board found that Sean Merlonghi testified that the Property is unique due to the location of the main dwelling, which was built in 1993 and had an addition built in 2008. He noted that he purchased the Property in 2015.
6. The Board found that Sean Merlonghi testified that, due to the location of his driveway, it would not be fundamentally functional to place the garage anywhere else.
7. The Board found that Sean Merlonghi testified that the Property is a through lot giving it a 45 feet setback to the rear of the house.
8. The Board found that Sean Merlonghi testified that the septic and drain field are accessed off the driveway.
9. The Board found that Sean Merlonghi testified that the pole building company has already made the proposed structure as narrow as possible but still be able to fit two (2) cars and that, without the variance, the proposed pole garage would be too close to the home.
10. The Board found that Sean Merlonghi testified that there are two (2) large trees in the rear of the Property.
11. The Board found that Sean Merlonghi testified that the distance from the property line to the proposed structure would still allow for proper maintenance of the structure.



12. The Board found that Sean Merlonghi testified that this request is the minimum variance.
13. The Board found that Sean Merlonghi testified that his neighbor closest to the structure submitted his approval of the proposed structure.
14. The Board found that Sean Merlonghi testified that the septic and drain field are in the center of his back yard approximately 15 feet from the rear deck.
15. The Board found that Sean Merlonghi testified that the building with the setback as is would be too close to the home and he would have to go around the pole building to reach the septic system.
16. The Board found that Sean Merlonghi testified that the roof of the pole building will be pitched and the siding will look like his home. He also noted that the garage will have a full gutter system and drain towards his home.
17. The Board found that Sean Merlonghi testified that the existing home, which consists of approximately 1,700 square feet, has a two (2) car garage and he plans on converting the garage into living space which creates the need for the pole barn.
18. The Board found that Sean Merlonghi testified that he has priced out having an addition constructed and it is 60% more expensive than the pole barn.
19. The Board found that Sean Merlonghi testified that the existing garage is 35 feet off the property line and he wants approximately 8-10 feet between the garage and the house.
20. The Board found that Sean Merlonghi testified that moving the proposed building to the left to be in compliance would put him closer to the septic and would impede the ability to access the system for maintenance.
21. The Board found that Sean Merlonghi testified that the garage will be designed to provide enough width so that he can fit his travel trailer as well as cars and additional storage. He noted that the garage is longer to accommodate his travel trailer.
22. The Board found that Sean Merlonghi testified that putting an addition on the rear of the home would be long and narrow, making it not functionable and costing 60% more.
23. The Board found that Sean Merlonghi testified that 50% of the proposed garage will be used to house their recreational vehicle.
24. The Board found that Sean Merlonghi testified that the existing attached garage is the ideal family room type for them.
25. The Board found that Sean Merlonghi testified that he has received approval from the homeowners association, though it is not needed.
26. The Board found that Sean Merlonghi testified that the garage will have a door facing their home and one (1) window facing the neighbors.
27. The Board found that Sean Merlonghi testified that there is a 20 foot buffer behind his home between New Road and his property line and there is more space due to the circle placed on New Road.
28. The Board found that Sean Merlonghi testified that he would remove the two (2) sheds in his rear yard if the garage is approved.
29. The Board found that no one appeared in support of or in opposition to the Application.
30. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, which the Board weighed and considered, the Board determined that the application failed to meet the standards for granting a variance. The findings below further support the Board's decision to deny the Application.
  - a. The Applicant failed to demonstrate that the Property was unique and that the uniqueness of the Property has created an exceptional practical difficulty. The lot is a rectangular lot of a similar size and shape of other lots in the area. The Applicant failed to convince the Board that there was some



unique physical condition which has created an exceptional practical difficult or unnecessary hardship. The lot is already improved by a dwelling, garage, and sheds. Now the Applicant seeks to convert the garage into additional living space and to construct a large, detached garage on the Property that will significantly encroach into the side yard setback area. The Applicant argued that the septic system and the through lot setback requirements limit the developability of the lot but the Applicant failed to convince the Board that the Property was somehow unique; particularly in comparison with nearby properties. The Property is already developed in compliance with the Code and the Applicant is simply seeking to develop the Property beyond what already exists and what the Code allows. To the extent an exceptional practical difficulty exists, it is the result of the Applicant's intention to construct the garage outside the building envelope. As such, the Applicant has failed to demonstrate that there was some unique condition which has created the exceptional practical difficulty.

- b. The Applicant failed to prove that the Property could not be developed in strict conformity with the Sussex County Zoning Code. Rather, the Property is already developed in strict conformity with the Code with a dwelling, garage, and sheds. The Applicant now seeks to convert the existing garage into additional living space and to construct a large, detached garage on the site. The garage, however, does not fit within the building envelope and will encroach into the side yard setback area. The Applicant argues that the garage will allow for storage of a travel trailer but the Applicant failed to demonstrate that there was no other way to reasonably develop the lot without a variance. The Board was simply not convinced that the Applicant could not otherwise develop the Property in compliance with the Code. Notably, the Property is already developed in strict conformity with the Code. Assuming that a garage was necessary, the Property appears large enough to accommodate a garage in compliance with the Code even if that garage would not be in the exact location where the Applicant wants it to be located or be the size the Applicant prefers. This, of course, assumes that the garage is even needed for the Applicant to reasonably use the lot. For these reasons, the Board finds that the Property could be developed in strict conformity with the Code and that the variance is not necessary to enable reasonable use of the Property.
- c. The Board finds that the Applicant is creating its own exceptional practical difficulty by proposing to construct a garage which does not fit within the building envelope. The Applicant's decision to construct this garage in this location is the reason for the need for a variance and has nothing to do with the size, shape, or condition of the Property. The Board was not convinced that there was an unusual condition to the Property which has created this difficulty. The building envelope appears to otherwise be able to fit a garage, albeit a smaller one, without the need for the variance. Moreover, the Property is already developed with a dwelling and garage. The Board was not convinced that the variance request was the product of a *need*. Instead, the variance request appears to be the product of a *want* as the Applicant seeks to build the garage as proposed for purposes of convenience, profit, and / or caprice. Since the Applicant can develop the Property in compliance with the Sussex County Zoning Code, the need for the variance is something created by the Applicant's wants rather than an unusual physical condition relating to the Property. The Applicant has thus created its own exceptional practical difficulty.
- d. Since the variance is not necessary to enable the reasonable use of the Property, the Board also finds that the variance requested is not the

minimum variance necessary to afford relief. Furthermore, the Board finds that no variance is needed to afford relief since there is space to develop the Property in compliance with the Sussex County Zoning Code.

- e. The Board also has concerns that the approval of this request would embolden others in the neighborhood to seek similar relief.

The Board denied the variance application finding that it failed to meet the standards for granting a variance.

Decision of the Board

Upon motion duly made and seconded, the variance application was denied. The Board Members in favor of the Motion to deny were Dr. Kevin Carson, Mr. Jeffrey Chorman, Mr. Travis Hastings, and Mr. Jordan Warfel. Mr. John Williamson voted against the Motion to deny 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 July 11, 2022.