

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

**IN RE: EVELYN COSENTINO**

**(Case No. 12688)**

A hearing was held after due notice on May 2, 2022. The Board members present were: Dr. Kevin Carson, 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 and side yard setback requirements for existing and proposed structures.

Findings of Fact

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

1. A variance of 5 feet from the ten (10) feet side yard setback requirement on the southeast side for an existing garage with lean-to;
2. A variance of 5 feet from the thirty (30) feet front yard setback requirement for an existing dwelling; and
3. A variance of 11 feet from the thirty (30) feet front yard setback requirement for an existing landing and set of steps.

This application pertains to certain real property located on the northeast side of Betty Street approximately 495 feet from Old Shawnee Road (911 Address: 5531 Betty Street, Milford); said property being identified as Sussex County Tax Map Parcel Number 130-3.00-84.00 (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 survey of the Property dated January 8, 2001, a letter of support, photographs, schematic plans, letters of support, 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 and no correspondence in opposition to the Application.
3. The Board found that Evelyn Cosentino and Frank Umstetter were sworn in to give testimony about the Application.
4. The Board found that Mr. Umstetter testified that plans were submitted for permits for a pole building to be built by the Applicant's contractor Diamond State Pole Buildings. He noted that the building was going to be 5 feet from the existing fence and was to measure 24 feet by 24 feet with a lean-to off the front. He testified that they were told it was accepted and then 2 weeks later, after the Property was staked out, they found out that the setbacks were different.
5. The Board found that Mr. Umstetter testified that the building was installed without the lean-to due to the square footage. The pole building itself could be located 5 feet from the side property line but the addition of the lean-to increased the square footage of the structure and a larger side yard setback requirement thus applied.
6. The Board found that Mr. Umstetter testified that the Applicant proposes to place the lean-to on the side of the pole building rather than in front of the pole building.
7. The Board found that Mr. Umstetter testified that they would be taking more of their own yard up than originally intended.
8. The Board found that Mr. Umstetter testified that the septic is located to the rear of the pole building.



9. The Board found that Mr. Umstetter testified that the house is approximately 25 feet from the front property line and that there is approximately 1 foot from the front property line to the edge of paving of the Betty Drive.
10. The Board found that Mr. Umstetter testified that the lean-to will just be used a covered area for resting and grilling.
11. The Board found that Mr. Umstetter testified that the building is very nice but they would still like the lean-to.
12. The Board found that Mr. Umstetter testified that he is unsure if it was Diamond State who made a mistake but all they were told was that a mistake was made and they need to move the building.
13. The Board found that Mr. Umstetter testified that there have been no complaints about the structure.
14. The Board found that Ms. Cosentino testified that they received the permit for the building as it was proposed initially with the lean-to.
15. The Board found that Ms. Cosentino testified that she does not know where the error was made in granting the permit and then changing the requirements but, when it was re-staked to comply with the Code, they were unable to access the garage from their driveway.
16. The Board found that Ms. Cosentino testified that, when they stated they would go smaller, they were told that the materials were already ordered and that they would have been stuck with the materials.
17. The Board found that Ms. Cosentino testified that they would like to place the lean-to on the side rather than the front now.
18. The Board found that Ms. Cosentino testified that the pole building with the lean-to is 140-160 feet over the square footage requirement to allow for the reduced side yard setback.
19. The Board found that Ms. Cosentino testified that, had they been told, they would not have chosen a pole building of this size since they wanted the lean-to.
20. The Board found that Ms. Cosentino testified that the garage was offset and they were unable to get the cars in if the pole building was moved closer to the middle of the lot.
21. The Board found that Ms. Cosentino testified that the structure poles were placed in a manner that they could not get in and they had to redesign the whole building, moving the garage door to the center and making them unable to place the lean-to on the front.
22. The Board found that Ms. Cosentino testified that she thought they were in compliance based on their contractor and the permit.
23. The Board found that Ms. Cosentino testified that the pole building was constructed in December 2021 and the lean-to will go towards the center of the Property.
24. The Board found that Ms. Cosentino testified that the house was existing when she purchased the Property and that the house has been there since the 1960s.
25. The Board found that Ms. Cosentino testified that there are three (3) steps with a 2-3 feet landing off the front of the house.
26. The Board found that Ms. Cosentino testified that they tried to accommodate for the adjustment of the permit but the materials were already ordered and they only received a credit for the wood for the lean-to but they have all the other metal which was purchased.
27. The Board found that Ms. Cosentino testified that Diamond State Pole Buildings obtained their permit for them and the entire plan changed and they were almost to the point of not doing the pole building at all but they were locked in to the contract regardless of the changes that had to be made and placed them in a hard spot. She was extremely disappointed.
28. The Board found that no one appeared in support of or in opposition to the Application.



29. 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 as it is a lot developed by a house prior to the enactment of the Sussex County Zoning Code and a septic system that services the lot. The Property is also a small and narrow lot measuring only 80 feet wide. The location of the house and the driveway limit where a pole building to house a vehicle could reasonably be placed and the septic system further limits the developable area of the lot. The Board notes that the septic system takes up a large part of the building envelope. These unique conditions greatly limit the buildable area of the lot and it is clear to the Board that the lot's unique characteristics have created an unnecessary hardship and exceptional practical difficulty for the Applicant who seeks to retain existing structures and to add a lean-to to an existing garage 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 is a narrow lot and has a limited building envelope due to the development prior to the enactment of the Sussex County Zoning Code, the lot's size, and the location of the septic system. The Applicant seeks to retain the existing structures and to add a lean-to to an existing garage 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 variances will allow the Applicant to retain the existing structures and to add a small lean-to to the garage on the Property. 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 Applicants. The Board notes that the lean-to will not cause the pole building to encroach closer to the side yard setback area.
  - d. The exceptional practical difficulty and unnecessary hardship were not created by the Applicant. The Applicant did not create the lot or place the existing dwelling. The Applicant was also limited in where the septic system could be located. Those conditions have limited the building envelope of the lot. The unique characteristics of the Property are clear when reviewing the survey. The Board is convinced that the unnecessary hardship and exceptional practical difficulty were not created by the Applicant but were created the lot's unique characteristics and the prior development thereof. The Board also notes that the Applicant reasonably relied on her builder to construct plans for the pole building with a lean-to that would allow for reasonable vehicular access to the pole building while complying with the Sussex County Zoning Code only to later find out that the builder made a mistake.
  - 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 dwelling has been on the Property since the 1960s with no complaints noted in the record. The pole building was constructed in compliance with the Sussex County Zoning Code but, due to the proposed lean-to, the size of the pole building expands and a larger setback

requirement is needed. There will be no expansion of the pole building within the side yard setback area. Rather, the lean-to will be added within the building envelope. Furthermore, no evidence was presented which would indicate that the variances would somehow alter the essential character of the neighborhood or be detrimental to the public welfare.

- 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 lean-to addition and to retain the existing structures on the lot. The Board notes that the Applicant was constrained by the unique conditions of the lot and have limited the size of the garage addition to minimize the variances requested.
- 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 Dr. Kevin Carson, Mr. Travis Hastings, Mr. Jordan Warfel, and Mr. John Williamson. No Board Member voted against the Motion to approve the variance application. 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 July 11, 2022