

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

**IN RE: THOMAS H. WHITE**

**(Case No. 12059)**

A hearing was held after due notice on November 20, 2017. The Board members present were: Mr. Dale Callaway, Ms. Ellen Magee, Mr. Bruce Mears, Mr. John Mills, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for a variance from the side yard setback requirement.

Findings of Fact

The Board found that the Applicant is seeking a variance of 3.7 feet from the fifteen (15) feet side yard setback requirement on the west side for an existing pole building. This application pertains to certain real property located on the north side of Kits Burrow Court, approximately 1,965 feet south of Lewes-Georgetown Highway (Route 9) (911 Address: 26109 Kits Burrow Court, Georgetown); said property being identified as Sussex County Tax Map Parcel Number 2-35-30.00-324.00.

1. The Board was given copies of the Application, a survey of the Property dated September 8, 2017, a Certificate of Compliance, 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 Thomas White was sworn in to testify about the Application. Mr. White submitted pictures for the Board to review.
4. The Board found that Mr. White testified that the pole building existed at the time he purchased the Property.
5. The Board found that Mr. White testified that he obtained a survey and the survey showed that a corner of the pole building encroached into the setback area.
6. The Board found that Mr. White testified that the building cannot be seen from the road. It measures 12 to 14 feet tall.
7. The Board found that Mr. White testified that he spoke with three (3) neighbors about the Application.
8. The Board found that Mr. White testified that the pole building is served by electricity.
9. The Board found that Mr. White testified that the septic system is located behind the house in the building envelope.
10. The Board found that no parties appeared in support of or in opposition to the Application.
11. 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 clearly unique as it is a narrow lot. The narrow shape of the Property has created a limited building envelope which is was exacerbated by the location of the septic system behind the house in the building envelope. The unique conditions of the Property have, thus, created an exceptional practical difficulty for the Applicant.
  - b. Due to the uniqueness of the Property, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The pole building was constructed by a prior owner and a Certificate of Compliance was

issued only for the Applicant to later discover the encroachment into the setback area. The Applicant is unable to retain the pole building 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 the pole building to remain on the Property. The Board is convinced that the shape and location of this pole building are reasonable, which is confirmed when reviewing the survey provided by the Applicant.

- c. The exceptional practical difficulty was not created by the Applicant. The Applicant only recently acquired the Property and it is clear that the Applicant did not create the shape of the Property or place the pole building on the lot. Rather, those conditions pre-existed the Applicant's acquisition of the Property. These unique physical conditions have resulted in a limited building envelope and have created the exceptional practical difficulty for the Applicant.
- d. 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 pole building has been on the Property without recorded complaints and despite the location of the pole building and notification to neighbors, no complaints were noted in the record about its location. Furthermore, no evidence was presented which would indicate that the variance would somehow alter the essential character of the neighborhood or be detrimental to the public welfare.
- e. 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 retain the existing pole building on the same footprint. No additions or modifications to the pole building are proposed.

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 were Mr. Dale Callaway, Ms. Ellen Magee, Mr. Bruce Mears, Mr. John Mills, and Mr. Brent Workman. No Board Member voted against the Motion to approve the variance application.

BOARD OF ADJUSTMENT  
OF SUSSEX COUNTY



Dale Callaway  
Chairman

If the use is not established within one (1)  
year from the date below the application  
becomes void.

Date January 23, 2018