

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: LOUIS W. MELTON & JANET C. MELTON

(Case No. 12409)

A hearing was held after due notice on February 3, 2020. The Board members present were: Dr. Kevin Carson, Mr. Jeff Chorman, Ms. Ellen Magee, Mr. John Williamson, and Mr. Brent Workman.

Nature of the Proceedings

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

Findings of Fact

The Board found that the Applicants are requesting a variance of 1.6 feet from the ten (10) feet rear yard setback requirement for an existing structure. The application pertains to certain real property located on the northwest corner of Old Mill Road and Railway Road (911 Address: 36328 Old Mill Road, Ocean View); said property being identified as Sussex County Tax Map Parcel Number 1-34-12.00-73.01. After a public hearing, the Board made the following findings of fact.

1. The Board was given copies of the Application, letters of support, a survey of the Property dated July 5, 2019, a site plan, pictures, 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 Louis Melton was sworn in to testify about the Application.
4. The Board found that Mr. Melton testified that the lot is unique because it is a triangular corner lot.
5. The Board found that Mr. Melton testified that the dwelling and garage are parallel with Old Mill Road and not with the rear property line.
6. The Board found that Mr. Melton testified that the lean-to is already built and covers the porch that encroaches.
7. The Board found that Mr. Melton testified that the porch is made of concrete.
8. The Board found that Mr. Melton testified that he has 2 sets of drawings. The first drawing shows the building and the second drawing shows the lean-to and porch. One drawing, which was used for the stakes, did not show the lean-to and porch.
9. The Board found that Mr. Melton testified that the encroachment will not alter the essential character of the neighborhood.
10. The Board found that Mr. Melton testified that a fence will be installed and the encroachment will be out of the view of neighbors.
11. The Board found that Mr. Melton testified that the variance requested is a minimum variance request to keep the existing structure.
12. The Board found that Mr. Melton testified that he received a building permit and hired Diamond State Pole Building to erect the structure.
13. The Board found that Mr. Melton testified that the lean-to was always part of the architectural drawings.
14. The Board found that Mr. Melton testified that the encroachment was discovered by Planning & Zoning staff but he has received no other complaints about the structure.
15. The Board found that Mr. Melton testified that the lean-to would require substantial renovation to be in compliance with the Code.
16. The Board found that Mr. Melton testified that the variance will preserve the architectural integrity of the building.

17. The Board found that Mr. Melton testified that the exceptional practical difficulty was not created by the Applicant but due to a mix up in the building drawings.
18. The Board found that Mr. Melton testified that the pole building measures 40 feet by 80 feet.
19. The Board found that one person appeared in support of and no one appeared 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 as it is an oddly shaped lot. While the lot consists of over 20,000 square feet, the lot is pie-shaped with a wide width but a shallow depth; particularly on the southeast side of the lot. The Property has angled rear property line which reduces the depth of the Property to only 29.70 feet at its shallowest point. The lot's unique conditions limit the buildable area available to the Applicant and have created an unnecessary hardship and an exceptional practical difficulty for the Applicants who seek to retain a pole building with a lean-to on the lot. The lean-to is an integral part of the pole building structure.
 - 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 shape and the buildable area thereof is limited due to the shape of the lot. The Applicants seek to retain a pole building with a lean-to but are 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 reasonably sized pole building with a lean-to to remain on the Property. The Board is convinced that the shape and location of the structure is also reasonable, which is confirmed when reviewing the survey provided by the Applicants. The Board notes that the Applicants placed the structure on the deeper side of the Property, yet still encountered difficulty complying with the building envelope restrictions.
 - d. The unnecessary hardship and exceptional practical difficulty were not created by the Applicants. The Applicants did not create the unusual size and shape of the Property. The unique size and shape of the Property is clear when reviewing the survey. There was also no evidence that the Applicants placed the structure on the lot. Rather, the Applicants relied on professionals to stake out the setbacks and to erect the structure in compliance with the Code. The Board is convinced that the unnecessary hardship and exceptional practical difficulty were not created by the Applicants but was created by the lot's unique characteristics and the error by the builder.
 - 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 the pole building with a lean-to will have no effect on the character of the neighborhood. Only a small corner of the pole building with a lean-to encroaches into the setback area and, based on the photographs provided by the Applicants, it is unlikely that such encroachment is noticeable without a survey. The Applicants also propose to construct a privacy fence to shield the encroachment from view. There was no

evidence that the location of the pole building with a lean-to in the rear yard setback area would somehow affect the neighborhood and no evidence was presented that the variance would somehow alter the essential character of the neighborhood or be detrimental to the public welfare.

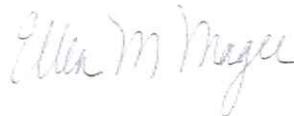
- f. The variance sought is the minimum variance necessary to afford relief and the variance requested represents the least modification possible of the regulation at issue. The Applicants have demonstrated that the variance sought will allow the Applicant to retain the pole building with a lean-to on the Property. No additions or modifications to the structure are proposed.
- 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. Jeffrey Chorman, Ms. Ellen Magee, Mr. John Williamson, and Mr. Brent Workman. No Board Member voted against the Motion to approve the variance application.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY



Ellen M. Magee
Chair

If the use is not established within two (2) years from the date below the application becomes void.

Date May 5, 2020.