

**TOWN OF SELBYVILLE  
BOARD OF ADJUSTMENT  
MINUTES  
February 22, 2023**

Chairman/Mayor Murray called the Board of Adjustment Hearing to order at 5 o'clock pm. Member/Town Solicitor Mary Schrider-Fox was in attendance. Also in attendance was Town Administrator Stacey Long as Secretary of the Board. Member/Councilman Tingle was absent.

The meeting was properly advertised 15 days in advance in a publication of general circulation.

Visitors in attendance were the applicant, Donald Haines and Joe Gebhart. No other visitors were in attendance.

The applicant presented his request to replace a large tent that is currently on the subject property, which is deteriorating and of limited remaining usefulness, with a new pole building in the exact same location and with the exact same footprint as the tent. The pole building will be a permanent structure and, thus, must comply with the setback and other requirements contained in the Zoning Code.

The Applicants are requesting a variance from the 30 foot front yard setback imposed by Section 200-24 of the Zoning Code and a variance from the parallel requirement for corner lots set forth in the definition of front yard in Section 200-3 of the Zoning Code, both of which are necessary in order to allow for the construction of a new pole building in the exact same location and with the exact same footprint as the tent.

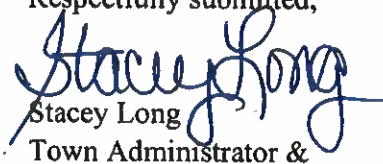
There were no letters received on the application in favor of or in opposition of the requested variance.

The finding of facts and decision of the Board of Adjustment is attached hereto.

Member/Town Solicitor Mary Schrider-Fox made a motion to approve the variance as requested. The motion was seconded by Chairman/Mayor Murray and carried by all.

There being no further business, Member/Town Solicitor Mary Schrider-Fox made a motion to adjourn the hearing. The motion was seconded by Chairman/Mayor Murray and carried by all.

Respectfully submitted,

  
Stacey Long

Town Administrator &  
Secretary of the Board of Adjustment

**BEFORE THE BOARD OF ADJUSTMENT  
OF THE TOWN OF SELBYVILLE**

**IN RE:** :  
 :  
**APPLICATION OF** : **DECISION**  
 :  
**DONALD AND PAMELA HAINES** :

The Board of Adjustment of the Town of Selbyville convened at 5:00 o'clock in the afternoon, prevailing time, on Wednesday, February 22, 2023, at the Town Hall, 1 West Church Street, Selbyville, Sussex County, Delaware, to hear the application of Donald and Pamela Haines ("Applicants") for a variance from the 30 foot front yard setback imposed by Section 200-24 of the Zoning Code and a variance from the parallel requirement for corner lots set forth in the definition of front yard in Section 200-3 of the Zoning Code for property owned by Applicant located at 45 W. Railroad Avenue, Selbyville, Delaware 19975, identified as Sussex County Tax Map and Parcel No. 533-16.11-36.00. Present for the Board of Adjustment were Clifton C. Murray, Mayor and Chair, and member Mary R. Schrider-Fox, Town Solicitor. Member Clarence W. Tingle, Jr., was absent. Present as well was Stacey Long, Town Administrator and Secretary for the Board of Adjustment. Donald Haines, accompanied by Joe Gebhart, presented the variance application to the Board.

**FINDINGS OF FACT**

The Applicants, Donald and Pamela Haines, are the owners of improved real property located at 45 W. Railroad Avenue, Selbyville, Delaware 19975, identified as Sussex County Tax Map and Parcel No. 533-16.11-36.00, within the corporate limits of the Town of Selbyville, Sussex County, State of Delaware (the "subject property").

The subject property is zoned R-1 Residential.

The Applicants have a conditional use to operate their business known as "Haines Fabrication" on the subject property.

The Applicants currently have a large tent, which was installed in or around 2012, on the northern corner of the subject property where W. Railroad Avenue intersects with Clendaniel Avenue. The tent is used as part of the Haines Fabrication business.

The Applicants would like to replace the large tent, which is deteriorating and of limited remaining usefulness, with a new pole building in the exact same location and with the exact same footprint as the tent. The pole building will be a permanent structure and, thus, must comply with the setback and other requirements contained in the Zoning Code.

The Applicants are requesting a variance from the 30 foot front yard setback imposed by Section 200-24 of the Zoning Code and a variance from the parallel requirement for corner lots set forth in the definition of front yard in Section 200-3 of the Zoning Code, both of which are necessary in order to allow for the construction of a new pole building in the exact same location and with the exact same footprint as the tent.

If the variances requested are granted, the southern corner of the new pole building will encroach into the front yard setback approximately 3.3 feet (+/-) and the new pole building will be positioned in a way that is not parallel to W. Railroad Avenue, as depicted on the building plan attached hereto as Exhibit "A" and incorporated herein by reference.

The Town has not received any comments or complaints from neighbors or citizens of the Town concerning the tent on the subject property.

The Board received no comments from the public, either in person at the hearing or in writing.

### CONCLUSIONS

Pursuant to Section 200-132. C. of the Zoning Code of the Town of Selbyville, the Board of Adjustment shall:

authorize upon appeal, in specific cases, such variance from the chapter as will not be contrary to the public interest, where owing to special conditions, a literal enforcement of the provisions of the chapter will result in unnecessary hardship or exceptional practical difficulties to the owner of the property, and so that the spirit of this chapter shall be observed and substantial justice done, provided such relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the chapter or Zoning Map.

Under Delaware case law, the Delaware Supreme Court has defined the two (2) types of variances, "use" variances and "area" variances. The Board of Adjustment v. Kwik-Check Realty, Inc., Del. Supr. 389 A.2d at 1289, 1291 (1978). That court indicated that "a use variance is a variance that changes the character of the zoned district by allowing the land to be used for a purpose otherwise proscribed by the zoning regulations." Id. However, an area variance "does not involve a prohibited use, and 'concerns only the practical difficulty in using the particular property for permitted use.'" Id. at 1291. The variances requested in this instance are area variances to which the "exceptional practical difficulty" standard applies.

The Board concludes that the Applicant faces an exceptional practical difficulty in that the subject property is a corner lot and is not of a uniform shape, resulting in challenges in terms of where to place accessory structures while remaining in compliance with all setback requirements and requirements for corner lots.

The Board concludes that the Applicant faces an exceptional practical difficulty in relation to its efforts to make a normal improvement to the subject property that will accommodate the construction of the new pole building thereon.

The Board concludes that granting the requested variance will help the Applicant maintain the subject property in a neat and orderly manner, as the new pole building to be constructed on the subject property replaces a deteriorating structure of limited additional usefulness.

The Board concludes that the requested variance is minimal, resulting in little or no detriment to the public good generally or to neighboring properties specifically.

The Board concludes that the spirit of the zoning regulations is met and substantial justice is done by the granting of the variance since there is no detriment to the public good, since the variance will not impede lines of site for traffic, and since the variance will not adversely affect drainage issues in or around the subject property.

### DECISION

It is the unanimous determination of the Board of Adjustment of the Town of Selbyville that Donald and Pamela Haines' request for a variance from the 30 foot front yard setback imposed by Section 200-24 of the Zoning Code and a variance from the parallel requirement for corner lots set forth in the definition of front yard in Section 200-3 of the Zoning Code is hereby granted. More specifically, as depicted on the building plan attached hereto as Exhibit "A", the southern corner of the new pole building to be constructed by Applicants on the subject property located at 45 W. Railroad Avenue, Selbyville, Delaware 19975, identified as Sussex County Tax Map and Parcel No. 533-16.11-36.00, is hereby permitted to encroach into the front yard setback approximately 3.3 feet (+/-) and the new pole building structure is hereby permitted to be positioned in a way that is not parallel to W. Railroad Avenue.

BOARD OF ADJUSTMENT OF  
THE TOWN OF SELBYVILLE

By:   
Clifton C. Murray, Mayor/Chair

By:   
Mary R. Schrider-Fox, Member/Town Solicitor

Date Filed with Town: 3/13/23

Date Mailed/Emailed to Applicants: 3/14/23

# **EXHIBIT “A”**

