

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: JAMES R. NICHOLS (Case No. 10959)

A hearing was held after due notice on April 16, 2012. The Board members present were: Mr. Dale Callaway, Mr. Jeff Hudson, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for a variance of the front yard and rear yard setback requirements.

Findings of Fact

The Board found that the Applicant was seeking a variance of 14.27 feet from the 30 foot front yard setback requirement for an existing deck and a variance of 0.97 feet from the 6 foot rear yard setback requirement for an existing pool. The Applicant has requested that the aforementioned requested variance be granted as it pertains to certain real property located northeast of Road 273A (Bald Eagle Road) north of 1st Street, being Lots 19 & 20 within Bay Vista development; said property being identified as Sussex County Tax Map Parcel Number 3-34-19.16-6.01. After a hearing, the Board made the following findings of fact:

1. James R. Nichols appeared at the hearing with his attorney Barrett Edwards, Esquire.
2. The Board found that the Applicant testified that he is selling the Property because he has moved out-of-state for work and that a survey completed for settlement showed encroachments into the setback areas.
3. The Board found that the Applicant testified that without the variances he will lose the sale and that the cost to relocate the pool and deck is approximately \$45,000.00.
4. The Board found that the Applicant testified that a prior survey showed the existing fence as the property line and that the Applicant believed the fence and street lines were the property lines. The Applicant further testified that the recent survey showed that the fence line and street lines are not the property lines.
5. The Board found that the Applicant testified that there are similar decks in the development and that there is a five foot buffer with a neighboring lot.
6. The Board found that the Applicant testified that the Property is a very shallow and narrow lot.
7. The Board found that the Applicant testified that the pool will improve the value of the lot.
8. The Board found that the Applicant testified that he hired a builder, Duane Emerick, to construct the deck and believed that the deck and pool were constructed in compliance with the setback requirements.
9. The Board found that the Applicant submitted pictures of the Property and copies of building permits and Certificates of Compliance that were issued pertaining to the construction of the pool and deck.
10. The Board found that no parties appeared in opposition to the Application.
11. The Board found that one (1) party appeared in support of the Application.
12. The Board found that the Planning & Zoning Department received three (3) letters in support of the Application.
13. Based on the findings above and the testimony presented at the public hearing and the public record, the Board determined that the Application met the standards for granting a variance. The Property is unique because it is shallow and narrow. The variance is necessary to enable reasonable use of the Property. The variance will not alter the essential character of the neighborhood

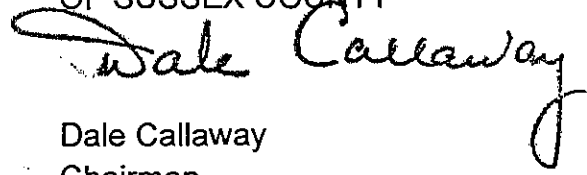
and is the minimum variance to afford relief. The need for the variance was not created by the Applicant as the Applicant relied on Certificate of Compliances from Sussex County.

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 application was granted. The Board Members in favor were Mr. Dale Callaway, Mr. Jeff Hudson, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman. No Member voted against the 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 May 8, 2012