

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: STANLEY E. BANKS AND PATSY C. BANKS

(Case No. 11337)

A hearing was held after due notice on February 17, 2014. The Board members present were: Mr. Dale Callaway, Mr. Jeff Hudson, Mr. John Mills, Mr. Brent Workman and Mr. Norman Rickard.

Nature of the Proceedings

This is an application for variances from the side yard and rear yard setback requirement.

Findings of Fact

The Board found that the Applicants were seeking a variance of 8.5 feet from the ten (10) feet side yard setback requirement for an existing swimming pool and a variance of 9.9 feet from the twenty (20) feet rear yard setback requirement for an existing pole building. The Applicants have requested that the aforementioned requested variances be granted as they pertain to certain real property located west of Route 13A (Seaford Road) 900 feet south of the Town of Blades; said property being identified as Sussex County Tax Map Parcel Number 1-32-1.19-35.01. After a hearing, the Board made the following findings of fact:

1. Stanley Banks was sworn in to testify on behalf of the Application and Shannon Carmean Burton, Esquire, presented the Application on behalf of the Applicants.
2. The Board found that the Office of Planning & Zoning received one (1) letter in support of the Application.
3. The Board found that Mrs. Burton stated that the Applicants purchased the Property in August 1975.
4. The Board found that Mrs. Burton stated that the pool was installed by American Pools in 1988 and that the Applicants believed that American Pools obtained the building permit.
5. The Board found that Mrs. Burton stated that American Pools went out of business and that the Applicants were unaware of the encroachment until they attempted to sell the Property and a survey completed for settlement showed the encroachments.
6. The Board found that Mrs. Burton stated that the difficulty was not created by the Applicants because the Applicants relied on American Pools to install the pool in compliance with the Sussex County Code.
7. The Board found that Mrs. Burton stated that there is a six (6) foot high fence along the Property line which shields the neighboring property and that the neighboring property is owned by Ms. Banks' mother who supports the Application.
8. The Board found that Mrs. Burton stated that the Property is unique in shape.
9. The Board found that Mrs. Burton stated that the pool is connected to the dwelling with an existing deck which was installed in 1988.
10. The Board found that Mrs. Burton stated that the pool cannot be moved due to its age.
11. The Board found that Mrs. Burton stated that the pool and pole building do not alter the character of the neighborhood.
12. The Board found that Mrs. Burton stated that the uses do not detrimental to the public welfare and that the uses do not impair the development of adjacent and neighboring properties.

13. The Board found that Mrs. Burton stated that the Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code.
14. The Board found that Mrs. Burton stated that the Applicants have received no complaints about the pool, deck, or pole building.
15. The Board found that Mrs. Burton stated that the variances requested are the minimum variances necessary to afford relief.
16. The Board found that Mrs. Burton stated that the original pole building was a legal, non-conforming structure.
17. The Board found that Mrs. Burton stated that, in 1993, the Applicants had to replace the building due to storm damage and that the new pole building was constructed in the same location as the original pole building.
18. The Board found that Mrs. Burton stated that a Certificate of Compliance was issued for the pole building in 1993.
19. The Board found that Mrs. Burton stated that the variance for the pole building was added to this Application in order to bring the Property into compliance with the Sussex County Zoning Code.
20. The Board found that Mrs. Burton stated that the pole building is located on a permanent foundation and cannot be moved.
21. The Board found that Mrs. Burton stated that the shape of the Property is unique.
22. The Board found that Mrs. Burton stated that the difficulty was not created by the Applicants.
23. The Board found that Mrs. Burton stated that the variances for the pole building and the pool are necessary to enable reasonable use of the Property.
24. The Board found that Mr. Banks, under oath, confirmed the statements made by Mrs. Burton.
25. The Board found that no parties appeared in support of or in opposition to the Application.
26. Based on the findings above and the testimony and evidence 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 in shape. The variances are necessary to enable reasonable use of the Property. The difficulty was not created by the Applicants. The Applicants would suffer an unnecessary hardship if required to move the pool, deck and pole building into compliance with the Sussex County Zoning Code. The variances will not alter the essential character of the neighborhood. The variances sought are the minimum variances necessary to afford relief.

The Board approved 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 approved. The Board Members voting to approve the Application were Mr. Dale Callaway, Mr. Jeff Hudson, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman. No Member voted against the Motion to Approve 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 March 25, 2014