

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

**IN RE: DALE FULTON**

**(Case No. 11513)**

A hearing was held after due notice on February 2, 2015. 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 from the side yard setback requirement.

**Findings of Fact**

The Board found that the Applicant was seeking a variance of four (4) feet from the ten (10) feet side yard setback requirement for a proposed swimming pool. This application pertains to certain real property located southwest of State Road (Road 272) 200 feet north of Ramp to Route One and across from New Castle Street Extended which is within the City of Rehoboth Beach (911 Address: 20314 State Road, Rehoboth Beach, DE); said property being identified as Sussex County Tax Map Parcel Number 3-34-19.08-149.00-Unit 5.

1. The Board was given copies of the Application, a portion of the tax map of the area, a survey of the Property dated November 18, 2014, and an undated survey of the Property.
2. The Board found that the Office of Planning & Zoning did not receive any correspondence regarding the Application.
3. The Board found that the Planning & Zoning Commission previously determined that the Property was not a through lot because it is inaccessible to Route One. No variance was necessary for the rear yard.
4. Dale Fulton was sworn in to testify about the Application.
5. The Board found that Mr. Fulton testified that he purchased the Property in August 2014 and that his contract for purchase included plans for a swimming pool. The Homeowners Association has approved the request for the pool.
6. The Board found that Mr. Fulton testified that the rear of the Property is strangely shaped and, in order to place the proposed pool, a variance is needed. The shape of the yard creates the difficulty and that the Property was designed by someone else.
7. The Board found that Mr. Fulton testified that a pool could be built on the Property but it would be so small that it would not be worth it to construct.
8. The Board found that Mr. Fulton testified that his neighbors support the pool and that he will minimize the impact of the pool on his neighbors. He has the consent from his neighbors to access their driveway during construction.
9. The Board found that Mr. Fulton testified that the Property is unique.
10. The Board found that Mr. Fulton testified that the proposed swimming pool will measure 10.5 feet by 20 feet.
11. The Board found that Mr. Fulton testified that the pool cannot be located elsewhere on the Property due to the existing screen porch and shed. The angle of the lot also limits placement of the proposed swimming pool.
12. The Board found that Mr. Fulton testified that the Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code.
13. The Board found that Mr. Fulton testified that the use will not impair the development or uses of neighboring and adjacent properties and that the variance will not alter the essential character of the neighborhood.

14. The Board found that no parties appeared in support of or in opposition to the Application.
15. 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 due to its unusual shape. The Property is angled in the rear yard in such a way that the area where the Applicant could build a reasonably sized pool is limited. The unique characteristics of this Property have created an exceptional practical difficulty for the Applicant.
  - b. Due to the unique shape of the lot, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Applicant seeks to construct a pool of a reasonable size but is unable to do so without violating the Sussex County Zoning Code. The Board is convinced that the size of the pool is reasonable and that the Applicant investigated other ways to place the pool on the Property without needing a variance. The Board found that the variance is necessary to enable the reasonable use of the Property as the variance will allow the proposed pool to be placed on the Property. The survey attached to the Application confirms that the pool is reasonable in size, shape, and location.
  - c. The exceptional practical difficulty was not created by the Applicant. The Applicant only recently purchased the Property and did not create is unusual shape. The shape of the Property has created the exceptional practical difficulty. The unique characteristics of the Property are clear when reviewing the survey.
  - 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 Applicant has submitted plans for the pool to his homeowners association and the plans were approved unanimously. The Applicant has also discussed the pool with neighboring properties and no one has objected to the pool. 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 represent the least modification possible of the regulation at issue. The Applicant has demonstrated he has investigated other placement options for the pool but the proposed placement of the pool is the best location and requires the least amount of variance needed to afford relief.

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, Mr. Jeff Hudson, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman. No Board Members 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 April 7, 2015