

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

**IN RE: NATHAN HUDSON**

**(Case No. 11537)**

A hearing was held after due notice on March 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 special use exception for the determination of existence to allow for a motorized track driven pool cover.

Findings of Fact

The Board found that the Applicant is requesting a special use exception for the determination of existence to allow for a motorized track driven pool cover. This application pertains to certain real property located southeast of Road 451 (Arvey Road) approximately 1,650 feet south of Road 464 (Woody Road) (911 Address: 14617 Arvey Road, Laurel, DE); said property being identified as Sussex County Tax Map Parcel Number 3-32-9.00-15.08. After a hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a portion of the tax map of the area, and a portion of the Sussex County Zoning Code.
2. The Board found that the Office of Planning and Zoning received no letters in support of or in opposition to the Application.
3. The Board found that Nathan Hudson was sworn in and testified regarding the Application. Mr. Hudson submitted to the Board a booklet of exhibits which included correspondence from the Applicant, aerial photographs of the Property, a letter from Coverstar, literature about the proposed pool cover, photographs of the Property, and portions of code provisions from other jurisdictions.
4. The Board found that Mr. Hudson testified that he plans to put a pool on his property and that he sought out the safest pool system.
5. The Board found that Mr. Hudson testified that he is requesting to seek approval to use a Safety Pool Cover system in lieu of the required four (4) feet high fence per the Zoning Code.
6. The Board found that Mr. Hudson testified that the proposed pool cover is made of a pliable membrane on which several adults can stand. The cover is operated by an electric switch that will be located inside the porch and the cover for the switch is locked with a key. The pool cover can be opened and closed manually and he has a generator available during power outages.
7. The Board found that Mr. Hudson testified that the pool will be covered when the pool is not in use.
8. The Board found that Mr. Hudson testified that this type of pool cover has been approved in other states and used in lieu of a fence.
9. The Board found that Mr. Hudson testified that the pool cover meets or exceeds current safety standards and that he believes the pool cover is safer than a fence.
10. The Board found that Mr. Hudson testified that the pool is located in the interior of the Applicant's property and is 603 feet from the nearest neighbor's property.
11. The Board found that Mr. Hudson testified that the use will not substantially adversely affect the uses of neighboring and adjacent properties, since he is not in a residential development.

12. The Board found that no parties appeared in support of or in opposition to the Application. One person posed a question which was answered by the Applicant.
13. 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 special use exception because the proposed pool cover in lieu of a fence will not substantially affect adversely the uses of neighboring and adjacent properties. The findings below further support the Board's decision to approve the Application.
  - a. The nearest residential neighbor is over 600 feet away from the pool.
  - b. The Property is located on a large parcel and is not located in a residential development.
  - c. The Applicant has demonstrated that the pool cover will provide adequate safety measures and will likely provide greater safety for persons near the pool than a fence would provide. The proposed pool cover will be closed when not in use and can only be accessed by a locked electrical box in a nearby porch. The Board is convinced that the pool cover in lieu of a fence is in keeping with the safety regulations set forth in the Sussex County Zoning Code for a pool.
  - d. No evidence was presented which would demonstrate that the pool cover would have a substantial adverse effect on neighboring and adjacent properties.

The Board granted the special use exception application finding that it met the standards for granting a special use exception.

Decision of the Board

Upon motion duly made and seconded, the special use exception 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 special use exception 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 21, 2015.