

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: RAYMOND WESTROD & ANN HIRS WESTROD

(Case No. 11592)

A hearing was held after due notice on June 22, 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 rear yard setback requirement.

Findings of Fact

The Board found that the Applicants are seeking a variance of 0.7 feet from the six (6) feet rear yard setback requirement for an existing in-ground pool. This application pertains to certain real property located on the west side of Kashmir Lane, south of Dry Brook Drive within Cedar Valley Subdivision (911 Address: 35548 Kashmir Lane, Rehoboth Beach); said property being identified as Sussex County Tax Map Parcel Number 3-34-12.00-768.00.

1. The Board was given copies of the Application, a portion of the tax map of the area, and an undated survey of the Property.
2. The Board found that the Office of Planning & Zoning received one (1) letter of support to the Application and had not received any correspondence in opposition to the Application.
3. Ann Westrod was sworn in to testify about the Application. William Schab, Esquire, presented the case on behalf of the Applicants and submitted pictures to the Board to review.
4. The Board found that Mr. Schab stated that the Applicants purchased the Property in 2014 and that a survey completed for settlement showed the encroachment.
5. The Board found that Mr. Schab stated that the pool was built in 2003 and that the Certificate of Compliance was issued for the pool.
6. The Board found that Mr. Schab stated that to bring the pool into compliance would result in a massive renovation of the back yard, at a large expense. The Applicants did not install the pool.
7. The Board found that Ms. Westrod, under oath, confirmed the statements made by Mr. Schab.
8. The Board found that Ms. Westrod testified that there is community property to the rear of the Applicants' property and that the community area is approximately twenty (20) feet wide.
9. The Board found that Ms. Westrod testified that the neighbors have no objection to the Application and that the variance requested is the minimum variance to afford relief.
10. The Board found that no parties appeared in support of or in opposition to the Application.
11. 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 small size. The unique characteristics of this Property limit the buildable area available to the Applicants and have created an exceptional practical difficulty for the Applicants. The

uniqueness of the Property is evident when reviewing the survey submitted by the Applicants. The situation is also unique because the in-ground pool was constructed in the rear yard by a prior owner and a Certificate of Compliance was obtained, which indicates that the pool complies with the Sussex County Zoning Code. The pool is mere inches into the setback area.

- b. Due to the uniqueness of the lot, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Applicants seek to retain the in-ground pool of a reasonable size but are unable to do so without violating the Sussex County Zoning Code. The Board is convinced that the variance is necessary to enable the reasonable use of the Property as the variance will allow a reasonably sized pool to be retained on the Property. The Board is convinced that the size, shape, and location of the pool are reasonable, which is confirmed when reviewing the survey. The Board is also convinced that the cost of bringing the pool into compliance is extreme in relation to the benefit received by moving the pool mere inches into compliance.
- c. The exceptional practical difficulty was not created by the Applicants. The Applicants did not place the pool on the Property. Rather, the pool was constructed by a prior owner. The prior owner obtained the necessary permits and a Certificate of Compliance and the mistake was only recently discovered even though the pool had been in its present location since 2003. It is clear to the Board that the exceptional practical difficulty was not created by the Applicants.
- 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 un rebutted testimony confirms that neighboring property owners were made aware of the encroachment and do not object thereto. The encroachment is into the rear yard setback area which is adjacent to common area. The pictures submitted by the Applicants demonstrate that the common area consists of a 20 feet wide buffer. The encroachment of the pool by mere inches into the rear yard setback should have no effect on this common area. Furthermore, the pool has also been in its present location for quite some time with no complaint about the encroachment having been submitted into the record. Rather, it appears as though the pool is likely part of the character of the neighborhood. Additionally, 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 represents the least modification possible of the regulation at issue. The Applicants have demonstrated that the variance sought will allow the pool to remain in its existing location. No variance is being sought for an addition to the existing pool.

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

Dale Callaway
Chairman

If the use is not established within one (1)
year from the date below the application
becomes void.

Date August 4, 2015.