

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: NANCY TANKELSON & FRANCOIS REVERDY

(Case No. 11649)

A hearing was held after due notice on October 5, 2015. The Board members present were: Mr. Dale Callaway, Mr. Jeff Hudson, Mr. John Mills, and Mr. Brent Workman.

Nature of the Proceedings

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

Findings of Fact

The Board found that the Applicants are seeking a variance of seven (7) feet from the ten (10) feet side yard setback requirement for a proposed pool, a variance of four (4) feet from the ten (10) feet side yard setback requirement for a proposed pool, and a variance of five (5) feet from the ten (10) feet side yard setback requirement for an attached shed. This application pertains to certain real property located on the southeast corner of Josephine Street and Fisher Street (911 Address: 38386 Josephine Street, Rehoboth Beach); said property being identified as Sussex County Tax Map Parcel Number 3-34-20.09-138.00.

1. The Board was given copies of the Application, a portion of the tax map of the area, pictures of the Property, minutes and findings of fact for Case No. 10770, and a survey of the Property dated August 25, 2004.
2. The Board found that the Office of Planning & Zoning received had not received any correspondence in support of or in opposition to Application.
3. Nancy Tankelson and Francois Reverdy were sworn in to testify about the Application.
4. The Board found that Mr. Reverdy testified that the Board granted a variance for the dwelling in 2011.
5. The Board found that Mr. Reverdy testified that in April 2014 they moved to the Property permanently.
6. The Board found that Mr. Reverdy testified that Ms. Tankleson would like to place a swimming pool on the Property as the proposed pool will allow her to swim laps which help alleviate the effects of her arthritis.
7. The Board found that Mr. Reverdy testified that the only sized pool which will fit on the Property within the setback area is a pool measuring 10 feet wide by 25 feet long. A pool of this size is not large enough for the Applicant to swim laps.
8. The Board found that Mr. Reverdy testified that the proposed pool will measure 14 feet wide by 36 feet long.
9. The Board found that Mr. Reverdy testified that pre-fabricated pools do not come in sizes which are 10 feet wide by 36 feet long. The size of the proposed pool is best suited pool for the intended use.
10. The Board found that Mr. Reverdy testified that the pool will be heated by geothermal wells and the proposed location keeps the pool the proper distance from the existing wells on the Property.
11. The Board found that Mr. Reverdy testified that the Applicants do not rent out the Property.
12. The Board found that Mr. Reverdy testified that they will install the necessary fences and will install landscaping to protect the view of the pool area.
13. The Board found that Mr. Reverdy testified that the variances will not alter the essential character of the neighborhood. The neighborhood is primarily residential and the pool is for their use only.

14. The Board found that Mr. Reverdy testified that the size of the Property and the size of the pool needed create a unique situation.
15. The Board found that Mr. Reverdy testified that the Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code.
16. The Board found that Mr. Reverdy testified that the difficulty was not created by the Applicants.
17. The Board found that Mr. Reverdy testified that the variances will not alter the essential character of the neighborhood and the variances will not impair the uses of adjacent and neighboring properties.
18. The Board found that Mr. Reverdy testified that the use will not be detrimental to the public welfare.
19. The Board found that Mr. Reverdy testified that the variances are the least modifications of the regulations at issue and the variances requested are the minimum variances necessary to afford relief.
20. The Board found that Mr. Reverdy testified that there is a half inch gap between the shed and the dwelling to prevent termites from entering the house.
21. The Board found that Ms. Tankleson testified that there are other pools in the neighborhood.
22. The Board found that Ms. Tankleson testified that she suffers from vertigo and other health problems which limit her ability to exercise. She likes to swim for exercise and has experienced problems when swimming in the ocean.
23. The Board found that no parties appeared in support of or in opposition to the Application.
24. The Board held the record open for the limited purpose of having the Planning & Zoning Office investigate whether a variance was needed for the shed and report back to the Board on October 19, 2015.
25. The Board found that the shed is a detached shed thus no variance is needed for the existing shed.
26. 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 for the variances related to the pool met the standards for granting a variance. The findings below further support the Board's decision to approve the Application.
 - a. The situation is unique as the Applicant suffers from arthritis and needs a pool in order to exercise. The Applicant needs a pool that is long enough to allow for her to swim laps but is unable to fit such a pool on the Property without violating the setback requirement. The Property is unique as it is only 50 feet wide, which is narrow. The unique characteristics of this Property limit the buildable area available to the Applicants and have created an exceptional practical difficulty for the Applicants who seek to place a pool on the lot.
 - b. Due to the uniqueness of the lot, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property has a unique size and the buildable area thereof is limited due to its size. The Applicants seek to place a pool of reasonable size but are unable to do so without violating the Sussex County Zoning Code. The pool needs to be long enough to allow for the Applicant to swim laps and the proposed pool appears to be the minimum size needed for such use. The Board is convinced that the variances are necessary to enable the reasonable use of the Property as the variances will allow a reasonably sized pool to be placed on the Property. The Board is convinced that the size, shape, and location of this pool are reasonable, which is confirmed when reviewing the survey provided by the Applicants.

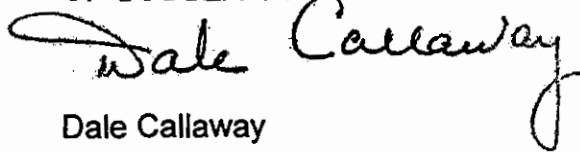
- c. The exceptional practical difficulty was not created by the Applicants. The Applicant did not create the unusual of the Property. The unique lot size has resulted in a limited building envelope on the Property and the small building envelope has created the exceptional practical difficulty. The unique characteristics of the Property are clear when reviewing the survey. Furthermore, the Applicant suffers from arthritis and needs a pool in order to exercise safely. The Board is convinced that the exceptional practical difficulty was not created by the Applicants but was created the lot's unique characteristics and by the Applicant's disability.
- d. The variances 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 Board is convinced that the pool will have no effect on the character of the neighborhood. There are other pools in the neighborhood and this pool will be screened with a fence. Furthermore, no evidence was presented which would indicate that the variances would somehow alter the essential character of the neighborhood or be detrimental to the public welfare.
- e. The variances sought are the minimum variances necessary to afford relief and the variances requested represent the least modifications possible of the regulations at issue. The Applicants have demonstrated that the variances sought will allow the Applicants to place a reasonably sized pool on the Property. The Board is convinced that the proposed pool is the minimum size pool needed in order to allow the Applicant to swim laps.
- f. The Board also finds that the Applicant suffers from a disability and that the variance approval represents a reasonable accommodation.

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, and Mr. Brent Workman. No Board Member voted against the Motion to approve the variance application. Mr. Norman Rickard was not present and did not participate in the discussion or vote of this 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 December 15, 2015