

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: RYAN MITCHELL & CYNTHIA MITCHELL

(Case No. 11905)

A hearing was held after due notice on February 20, 2017. The Board members present were: Mr. John Mills, Mr. Jeff Hudson, 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 11.3 feet from the twenty (20) feet rear yard setback for an existing pool house. This application pertains to certain real property located on the north side of Gum Road approximately 566 feet west of Roxana Road (911 Address: 36215 Little Creek Lane, Frankford); said property being identified as Sussex County Tax Map Parcel Number 5-33-10.00-46.02.

1. The Board was given copies of the Application, a portion of the tax map of the area, a survey of the Property dated October 24, 2016, a property record card, building permits, and an aerial photograph of the Property.
2. The Board found that the Office of Planning & Zoning received no correspondence in support of or in opposition to the Application.
3. Ryan Mitchell, Jaclyn Hills, and Robert Maddox were sworn in to testify about the Application. Mr. Mitchell submitted a letter from his neighbor and Ms. Hills submitted pictures of the Property to the Board to review.
4. The Board found that Ms. Hills testified that the dwelling was built in the mid-1970s.
5. The Board found that Ms. Hills testified that the buyer plans to use the Property as it exists now.
6. The Board found that Ms. Hills testified that the pool and the pool house have been on the Property since the dwelling was constructed.
7. The Board found that Ms. Hills testified that the Property has changed hands several times since the pool house was constructed but the encroachment was not discovered until the most recent survey was completed.
8. The Board found that Ms. Hills testified that the neighbor supports the request.
9. The Board found that Ms. Hills testified that the Applicants do not intend to make additions to the pool house and the sheds have been removed.
10. The Board found that Ms. Hills testified that the Property cannot otherwise be developed and the difficulty was not created by the Applicants.
11. The Board found that Ms. Hills testified that the existing structures were built by the original owner.
12. The Board found that Ms. Hills testified that a new septic is to be installed.
13. The Board found that Ms. Hills testified that the pool house cannot be moved as it is in on a permanent foundation and the pool house is used to service the pool.
14. The Board found that Mr. Mitchell testified that the Property was last sold in 2001 and the survey represents the lot as it was in 2001.
15. The Board found that Mr. Mitchell testified that his neighbor supports the request and he is unaware of any complaints about the pool house.
16. The Board found that Mr. Mitchell testified that the septic system is on the west side of the rear of the house.
17. The Board found that Mr. Maddox testified that he represents the buyer who is his son and he supports the Application.
18. The Board found that no parties appeared in support of or in opposition to the Application.

19. 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 history. The Property was developed in the mid-1970s with a dwelling, sheds, pool, and pool house. The pool house was constructed too close to the rear property line and, even though the Property has been sold multiple times since the pool house was constructed, the encroachment was only recently discovered. This unique situation has created an exceptional practical difficulty for the Applicants who seek to retain a reasonably sized pool house on the Property.
 - b. Due to the uniqueness of the situation, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Applicants seek to retain a pool house of a reasonable size but are unable to do so without violating the Sussex County Zoning Code. The pool house services a pool located on the Property and has been on the lot for approximately 40 years. The pool house is located on a permanent foundation and cannot be moved into compliance with the Code. The variance is thus necessary to enable reasonable use of the Property as the variance will allow a reasonably sized pool house to remain on the Property. The Board is convinced that the shape and location of this pool house 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 Applicants did not place the pool house on the Property. Rather, the pool house has been on the Property for approximately 40 years and was placed on the Property by a prior owner. The placement of the pool house on the Property by a prior owner has created the exceptional practical difficulty for 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 Board is convinced that the pool house will have no effect on the character of the neighborhood. The pool house has been located on the Property for approximately 40 years without complaint noted in the record. Rather, the evidence demonstrates that the Applicants' neighbor supports the application. 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. The lack of evidence is telling since the pool house has been on the Property for many years.
 - 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 Applicants to retain a reasonably sized pool house on the Property. The pool house services the adjacent pool and cannot be moved into compliance.

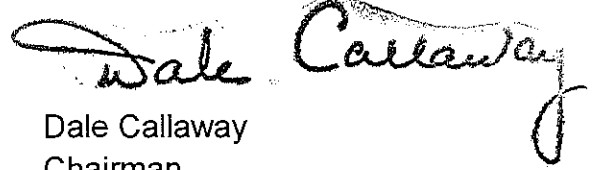
The Board granted the variance application finding that it met the standards for granting a variance.

Decision of the Board

Upon motion duly made and seconded, the variance application was approved. The Board Members in favor were Mr. Jeff Hudson, Mr. John Mills, and Mr. Brent Workman. No Board Member voted against the Motion to approve the variance

application. Mr. Dale Callaway and Mr. Norman Rickard did not participate in the discussion or vote on 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 April 4, 2017.