

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: MARK J. CLARK & SANDRA J. CLARK

(Case No. 11949)

A hearing was held after due notice on April 17, 2017. The Board members present were: Mr. Dale Callaway, Mr. John Mills, Mr. Jeff Hudson, Mr. Norman Rickard, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for a variance from the front yard setback requirement on a through lot.

Findings of Fact

The Board found that the Applicants are seeking a variance 14.7 feet from the forty (40) feet front yard setback requirement on a through lot for a proposed swimming pool. This application pertains to certain real property located on the southwest side of Mulberry Lane approximately 367 feet northwest of Cedar Drive (Route 30) (911 Address: 34032 Mulberry Lane, Lewes); said property being identified as Sussex County Tax Map Parcel Number 3-34-6.00-556.00.

1. The Board was given copies of the Application, an aerial photograph of the Property, a survey dated December 31, 2016, a portion of the tax map, a petition supporting the Application, literature regarding the fence, and pictures 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. The Board found that Sandra Clark was sworn in to testify about the Application.
4. The Board found that Mrs. Clark testified that the Property is unique because it is a through lot with two front yards.
5. The Board found that Mrs. Clark testified that the pool cannot be placed in the yard without a variance.
6. The Board found that Mrs. Clark testified that the proposed location of the pool is the best location for the pool and is the farthest available away from neighboring structures.
7. The Board found that Mrs. Clark testified that the variance will not alter the essential character of the neighborhood. There are 5 other pools in the neighborhood.
8. The Board found that Mrs. Clark testified that the neighbors adjacent to the Property and the Sandy Brae Homeowners Association support the Application.
9. The Board found that Mrs. Clark testified that a privacy fence measuring 6 feet tall will be placed around the pool.
10. The Board found that Mrs. Clark testified that the neighboring lots are already developed.
11. The Board found that Mrs. Clark testified that the propane tank will be moved from its current location.
12. The Board found that Mrs. Clark testified that she proposes to replace the existing fence with a new six feet vinyl fence. The fence is located along the property line. She previously obtained a variance for the existing fence.
13. The Board found that Mrs. Clark testified that Mrs. Clark testified that the existing fence is a wooded fence but the proposed fence will be a vinyl fence.
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 as it is a lot with road frontages on two roads and the lot is not particularly large. These conditions greatly restrict the building envelope on the Property. While the Property is considered a through lot, the Applicants do not have direct access to Plantations Road and only access the Property from Mulberry Lane. It is clear to the Board that the lot's unique characteristics have created an exceptional practical difficulty for the Applicants who seek to construct a reasonably sized 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 is bordered on two sides by roads and has unique setback requirements even though the Applicants can only access the Property from one of those roads. The Applicants seek to construct a reasonably sized pool 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 the Applicants to construct a pool on the Property. The Board is convinced that the shape and location of the pool are also 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 create the shape and size of the lot or enact the setback requirements which have limited the building envelope of the lot. The unique characteristics of the Property are clear when reviewing the survey. The Board is convinced that the exceptional practical difficulty was not created by the Applicants but was created the lot's unique characteristics.
- 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 will have no effect on the character of the neighborhood. There are 5 other pools in the community and neighbors and the homeowners association support this application. Furthermore, 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 Applicants to construct a reasonably sized pool on the Property. The Board is also convinced that the Applicants have designed the placement of the pool so as to minimize the encroachments into the setback areas and the minimize the disturbance of the pool on neighboring properties.

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 Member 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 May 16, 2017