

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

**IN RE: JOHN THOMAS & JULIE THOMAS**

**(Case No. 12067)**

A hearing was held after due notice on December 18, 2017. The Board members present were: Mr. Dale Callaway, Ms. Ellen Magee, Mr. Bruce Mears, Mr. John Mills, and Mr. Brent Workman.

Nature of the Proceedings

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

Findings of Fact

The Board found that the Applicants are seeking a variance of 3.0 feet from the ten (10) feet side yard setback requirement on the south side for a proposed pool. This application pertains to certain real property located on the south side of Carla Avenue, at the corner of Carla Avenue and Draper Drive (911 Address: 316 Carla Avenue, Rehoboth Beach); said property being identified as Sussex County Tax Map Parcel Number 3-34-20.13-225.01.

1. The Board was given copies of the Application, a survey of the Property dated April 6, 1999, an aerial photograph of the Property, and a portion of the tax map of the area.
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 John Thomas was sworn in and testified about the Application.
4. The Board found that Mr. Thomas testified that the yard is small and narrow.
5. The Board found that Mr. Thomas testified that pool will be located seven (7) feet from the side property line and six (6) feet from the rear property line. The pool is proposed to be located in this location in order to provide separation distance from the house.
6. The Board found that Mr. Thomas testified that there will be pavers between the house and the pool. Pavers will also be located around the pool. The sitting area will be located between the pool and the house. The pool will be made of concrete.
7. The Board found that Mr. Thomas testified that the Property is unique because the space available for a pool is too small.
8. The Board found that Mr. Thomas testified that the variance will not alter the essential character of the neighborhood. Other neighbors have obtained variances and there are other pools in the neighborhood.
9. The Board found that Mr. Thomas testified that the variance requested is the minimum variance necessary to afford relief.
10. The Board found that Mr. Thomas testified that the Applicants have not spoken with their neighbors about the pool.
11. The Board found that Mr. Thomas testified that his neighbor has a shed near the property line.
12. The Board found that Mr. Thomas testified that the builder lined the house up with other houses in the neighborhood.
13. The Board found that Mr. Thomas testified that there are no stairs from the rear of the dwelling to the area where the pool will be located but the Applicants are considering constructing an access from the sunroom to the pool and stairs would be needed from that access point.
14. The Board found that Mr. Thomas testified that there is a fence in the side and rear yard. There will be landscaping between the pool and the fence.

15. The Board found that Mr. Thomas testified that the dwelling consists of approximately 2,400 square feet.
16. The Board found that no parties appeared in support of or in opposition to the Application.
17. 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 unrebutted, 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 corner lot with a curved property line at the intersection of Carla Avenue and Draper Drive. The dwelling was constructed at the appropriate setback distances from Carla Avenue and Draper Drive but, due to the curvature of the northwest corner of the lot, the dwelling could not be placed closer to Draper Drive without encroaching into the front yard setback area. As a result of this unique condition, the building envelope of the rear and side yard along the southeast corner of the Property is quite limited. These unique physical conditions have created an exceptional practical difficulty for the Applicants who seek to build a pool in the southeast corner of the Property.
  - b. Due to the uniqueness of the Property, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Applicants seek to construct a reasonably sized pool to the rear of the home 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 constructed 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. The proposed location of the pool will also allow the Applicants to construct an access from the home to the pool and to provide a reasonable seating area around the pool. The Board notes that, if the Property was not curved in the northwest corner, the dwelling could have been placed closer to Draper Drive and, otherwise, there would have been enough room for the pool.
  - c. The exceptional practical difficulty was not created by the Applicants. There was no evidence that the Applicants created the unique curvature of the northwest corner of the Property. This unique condition has created an unusually shaped and limited building envelope which is further limited by the corner yard setback requirement. These conditions have created the exceptional practical difficulty for the Applicants who seek to construct a reasonably sized pool on the lot.
  - 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. The unrebutted evidence confirms that there are other pools in the neighborhood. The Applicants will construct a fence with landscaping between the pool and neighboring properties and these obstructions should limit the impact of the pool on those properties. 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

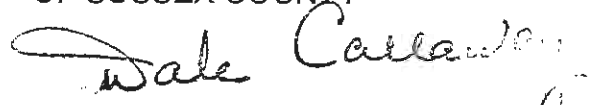
sought will allow the Applicants to place a reasonably sized pool on the Property. The pool is placed as close to the dwelling as possible to allow a safe access to the dwelling and a reasonably sized seating area around the pool. The Board is convinced that the Applicants have limited the size and location of the pool to minimize the need for the variance.

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, Ms. Ellen Magee, Mr. Bruce Mears, Mr. John Mills, 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 February 20, 2018.