

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: PAUL MERRILL & MARIE MERRILL

(Case No. 12106)

A hearing was held after due notice on February 19, 2018. The Board members present were: Mr. Dale Callaway, Mr. Bruce Mears, Mr. John Mills, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for variances from the fence height requirement and front yard setback requirement for a through lot.

Findings of Fact

The Board found that the Applicants are seeking a variance of 18.9 feet from the forty (40) feet front yard setback requirement from New Road for a proposed swimming pool and a variance of 2.5 feet from the 3.5 feet fence height requirement for a fence in a front yard. This application pertains to certain real property on the north end of Nassau Court North, approximately 238 feet northwest of the intersection of Nassau Loop and Nassau Court North (911 Address: 32850 Nassau Court North, Lewes) said property being identified as Sussex County Tax Map Parcel Number: 3-35-7.00-125.00.

1. The Board was given copies of the Application, aerial photographs of the Property, a portion of the tax map of the area, letters of support of the Application, and a survey of the Property dated November 14, 2017.
2. The Board found that the Office of Planning & Zoning received three (3) letters in support of the Application and no correspondence in opposition to the Application.
3. The Board found that Paul Merrill and Marie Merrill were sworn in to testify about the Application.
4. The Board found that Mrs. Merrill testified that the Property is unique and is considered a through lot with two front yards.
5. The Board found that Mrs. Merrill testified that the community requires that the front of the house face the development and the Applicants consider the New Road side of the Property as the rear yard. The rear of the home faces New Road.
6. The Board found that Mrs. Merrill testified that the Applicants are unable to reasonably use the Property.
7. The Board found that Mrs. Merrill testified that the Applicants did not create the exceptional practical difficulty.
8. The Board found that Mrs. Merrill testified that the community was created approximately 15 years ago.
9. The Board found that Mrs. Merrill testified that the variances will not alter the essential character of the neighborhood and that neighbors support the Application. There are other pools in the neighborhood.
10. The Board found that Mrs. Merrill testified that the variances will enable the Applicants to maximize the use the area they consider to be the rear of the lot.
11. The Board found that Mrs. Merrill testified that Sussex County Code requires that fences surrounding a pool be at least 4 feet tall but the Code restricts the height of fences in a front yard.
12. The Board found that Mrs. Merrill testified that the Applicants considered placing the pool to the west side of the Property but there are no windows on the west side of the house and, thus, there would be no visibility from inside the home to the pool if the pool was located on the west side of the home. This lack of visibility posed a safety concern for the Applicants.

13. The Board found that Mr. Merrill testified that, if the pool was located to the west side, the pool would be very close to the house and neighboring property. The Applicants discussed that option with the pool installer.
14. The Board found that Mrs. Merrill testified that the Applicants want to enclose the pool completely with a fence.
15. The Board found that Mr. Merrill testified that the Applicants intend to place concrete or pavers in some areas around the fence. The fence will line up with the house.
16. The Board found that Mr. Merrill testified that Applicants have considered erecting a shed for the pool pump but the shed would be located within the building envelope.
17. The Board found that Mrs. Merrill testified that the variances will not affect visibility on New Road and there are other properties along New Road with similarly situated fences and structures.
18. The Board found that Charles Vickers was sworn in and testified in support of the Application.
19. The Board found that Mr. Vickers testified that he is the direct neighbor to the Property. He had a similar situation when he added a fence on his property line.
20. The Board found that Mr. Vickers testified that the subdivision was created in 2001 but modern subdivisions require a buffer from adjacent roads and similarly situated lots would not be considered through lots.
21. The Board found that Mr. Vickers testified that the subdivision requires that all homes face the cul-de-sac and all utilities enter from the cul-de-sac. No utilities come from New Road to the lots.
22. The Board found that Mr. Vickers testified that his fence is 6 feet tall and he needed a variance for his fence.
23. The Board found that Mr. Vickers testified that there is no vehicular access to New Road from the lots adjacent to a cul-de-sac.
24. The Board found that three (3) parties appeared in support of the Application.
25. The Board found that no parties appeared in opposition to the Application.
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 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 has a very unique shape. 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 New Road and only access the Property from Nassau Court North. 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 and fence 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 and fence but are unable to do so without violating the Sussex County Zoning Code. The Board is convinced that the variances are necessary to enable the reasonable use of the Property as the variances will allow the Applicants to construct a pool and fence on the Property. The Board is convinced that the shape and location of the pool and fence 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.

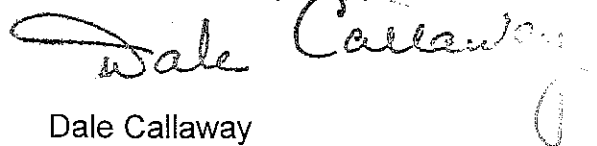
- d. The variances will not alter the essential character of the neighborhood nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare. The Board is convinced that the pool and fence will have no effect on the character of the neighborhood. There are other pools and similar fences in the community and neighbors support this application. 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 construct a reasonably sized pool and fence on the Property. The Board is also convinced that the Applicants have designed the placement of the pool and fence to minimize the encroachments into the setback areas and to 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. Bruce Mears, Mr. John Mills, and Mr. Brent Workman. No Board Member voted against the Motion to approve the variance application. Ms. Ellen Magee 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 two (2) years from the date below the application becomes void.

Date April 17, 2018