

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

**IN RE: LYNNE CRAIG**

**(Case No. 12122)**

A hearing was held after due notice on April 16, 2018. The Board members present were: Mr. Dale Callaway, Ms. Ellen Magee, and Mr. Bruce Mears.

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 Applicant is seeking a variance of 24.4 feet from the thirty (30) feet front yard setback requirement along Hickory Lane for a proposed pool house and a variance of 11.8 feet from the thirty (30) feet front yard setback requirement along Hickory Lane for an existing pool. The Application was originally advertised for a variance from the fence height requirement but further investigation by the Planning & Zoning staff determined that a variance for the fence had been granted by the Board in 1976. This application pertains to certain real property located at the intersection of Hickory Lane and Keenwick Road. (911 Address: 38178 Keenwick Road, Selbyville); said property being identified as Sussex County Tax Map Parcel Number 5-33-20.09-58.00.

1. The Board was given copies of the Application, a property record card, a survey of the Property dated January 22, 2018, a site plan dated March 1, 2018, aerial photographs of the Property, minutes for Case No. 918, and a portion of the tax map of the area.
2. The Board found that the Office of Planning & Zoning no correspondence in support of the Application and two (2) letters in opposition to the Application.
3. The Board found that Lynne Craig was sworn in to testify about the Application and submitted exhibits for the Board to review
4. The Board found that Ms. Craig testified that the house was built in 1974 and her family purchased the Property in 1988.
5. The Board found that Ms. Craig testified that she proposes to rebuild the existing pool house.
6. The Board found that Ms. Craig testified that the lot is triangular shaped and the Property's shape makes it difficult to make reasonable use of the Property.
7. The Board found that Ms. Craig testified that she cannot relocate the existing pool or otherwise place the proposed pool house. The pool pump also cannot be relocated.
8. The Board found that Ms. Craig testified that the proposed pool house will be smaller than the existing pool house and will encroach less into the setback area. The existing pool house consists of 466 square feet and the proposed pool house will consist of 454 square feet. The proposed pool house will be one story tall.
9. The Board found that Ms. Craig testified that the Property has two front yards but she thinks Hickory Lane was considered the side yard when the pool house was originally built.
10. The Board found that Ms. Craig testified that the Property cannot otherwise be developed.
11. The Board found that Ms. Craig testified that the difficulty was created by the original owner who built the original pool house.
12. The Board found that Ms. Craig testified that the variances will not alter the essential character of the neighborhood and the variances requested are the minimum variances necessary to afford relief.

13. The Board found that Ms. Craig testified that there is approximately 25 feet from the edge of paving of Hickory Lane to the pool house.
14. The Board found that Ms. Craig testified that no neighbors have complained about the pool or the pool house.
15. The Board found that Ms. Craig testified that she made no additions to the pool.
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 weighed and considered, 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 clearly unique as it is a triangularly shaped lot with an odd building envelope as is shown on the survey. This unique shape greatly limits the building envelope of the Property. The building envelope is further limited because the Property is considered a through lot with two road frontages. These unique physical conditions have created an unusual and limited building envelope for the Applicant and have created an exceptional practical difficulty for the Applicant.
  - b. Due to the uniqueness of the Property, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The unique shape of the Property and the two road frontages greatly limit the building envelope. The Applicant seeks to retain a pool of a reasonable size and to replace an existing pool house with a smaller pool house but is unable to do so without violating the Sussex County Zoning Code. The pool has been in its present location for decades and cannot be located elsewhere on the lot. The proposed pool house replaces an existing pool house which houses the pool pump. The proposed pool house cannot be relocated on the lot elsewhere. The pool pump also can be relocated. The Board is convinced that the variances are necessary to enable the reasonable use of the Property as the variances will allow the pool to remain on the Property and for the Applicant to replace the older pool house. The Board is convinced that the shape and location of these structures are reasonable, which is confirmed when reviewing the survey provided by the Applicant.
  - c. The exceptional practical difficulty was not created by the Applicant. The Property has an unusual shape and is further subject to building limitations due to the two road frontages. These conditions have greatly constrained the building envelope on the Property and these unique physical conditions have created the exceptional practical difficulty for the Applicant. The Applicant also did not construct the pool or the existing pool house. Rather, those structures were placed on the Property by a prior owner decades ago.
  - 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. There is a significant gap between the front property line and the edge of paving of Hickory Lane and it is unlikely that the encroachments would be noticed. Despite the fact that the pool and pool house have been on the Property for many years and neighbors were notified of these variance requests, no complaints were noted in the record about the pool or the pool house. The Applicant is reducing the size of the pool house and its encroachment into the setback area so the proposed pool house will improve the situation. Presumably, if the new pool house were to alter the essential character of the neighborhood, the Board would expect some evidence of such. No evidence, however, was presented which would indicate that the variances

would somehow alter the essential character of the neighborhood or be detrimental to the public welfare. The Board notes that letters were submitted to the Board objecting to a variance for a fence height increase but no such fence height variance is proposed because a variance was granted in 1976. Notably, those persons in opposition made no objection to the pool or pool house.

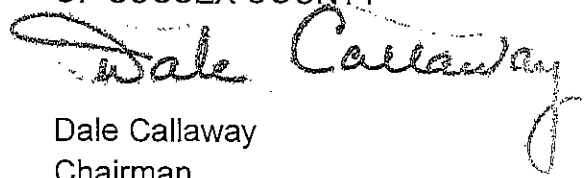
- e. The variances sought are the minimum variances necessary to afford relief and the variances requested represent the least modifications possible of the regulations at issue. The Applicant has demonstrated that the variances sought will allow the Applicant to retain the existing pool and to construct a reasonably sized pool house. No additions or modifications to the pool are proposed. The pool house is smaller than the existing pool house and the Board is convinced that the Applicant took steps to reduce its encroachment into the setback area.

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, and Mr. Bruce Mears. No Board Member voted against the Motion to approve the variance application. Mr. John Mills and Mr. Brent Workman 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 June 19, 2018