

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

**IN RE: GARY J. BARNES**

**(Case No. 12190)**

A hearing was held after due notice on September 10, 2018. 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 for a proposed structure.

Findings of Fact

The Board found that the Applicant is seeking a variance of 2.5 feet from the ten (10) feet side yard setback requirement on the east side for a proposed pool. This application pertains to certain real property on the north side of Waterworks Court, approximately 720 feet west of Coastal Highway (Route 1) (911 Address: 39622 Waterworks Court, Bethany Beach) said property being identified as Sussex County Tax Map Parcel Number 1-34-9.00-1134.00.

1. The Board was given copies of the Application, a survey of the Property dated August 9, 2013, assessment information, a schematic of the proposed pool, a survey of the Property dated June 19, 2018, 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 the Application and one (1) letter in opposition to the Application.
3. The Board found that Gary Barnes and Eftihia Barnes were sworn in to testify about the Application and submitted pictures to the Board.
4. The Board found that Mr. Barnes testified that the Property is near a water tower and is subject to easements along the side and rear yards.
5. The Board found that Mr. Barnes testified that there are 23 lots in the neighborhood and there are six other pools in the neighborhood and one more proposed for the lot next to him.
6. The Board found that Mr. Barnes testified that the house was placed on the center of the lot. Other homes in the neighborhood were located to the side.
7. The Board found that Mr. Barnes testified that, due to the easements on the Property, the Property cannot be otherwise developed in strict conformity with the Sussex County Zoning Code.
8. The Board found that Mr. Barnes testified that the house was already on the lot when he purchased the lot.
9. The Board found that Mr. Barnes testified that the pool cannot go on the other side of the house due to the location of an underground propane tank and HVAC system.
10. The Board found that Mr. Barnes testified that the Property is unique.
11. The Board found that Mr. Barnes testified that the exceptional practical difficulty was not created by him.
12. The Board found that Mr. Barnes testified that the homeowners' association supports the Application.
13. The Board found that Mr. Barnes testified that the variance will not alter the character of the neighborhood
14. The Board found that Ms. Barnes testified that the pool is the narrowest pool available.
15. The Board found that no parties appeared in support of or in opposition to the Application.

16. 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 unique due to its size and easements. The Property is 10,002 square feet and, if it were 2 square feet smaller, it would be considered an undersized lot with different setback requirements for principal structures. The Property is, however, subject to easements on both sides of the Property and the rear yard. The easement in the rear yard is a large easement and greatly limits the building envelope. These conditions are unique and have created an exceptional practical difficulty for the Applicant who seeks 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 has a unique size and the buildable area thereof is limited due to its size and easements. The rear yard easement particularly limits the development of the Property. The Applicant seeks to construct a pool of reasonable size but is 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 pool to be placed 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 Applicant. The pool will be used to provide outdoor entertainment for the Applicant and his guests in a manner similar to other pools in the neighborhood.
  - c. The exceptional practical difficulty was not created by the Applicant. The Applicant did not create the unusual size and easements of the Property. The lot was created by a prior owner and the dwelling was on the Property when the Applicant purchased the same. The lot's unique conditions have resulted in a limited building envelope on the Property and these conditions have created the exceptional practical difficulty. 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 Applicant but was created by 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 other similar pools in the neighborhood. The Board was not convinced by the opposition that the variance would somehow alter the essential character of the neighborhood. The Board also notes that the homeowners' association supports the request.
  - e. The variance sought is the minimum variance necessary to afford relief and the variance requested represent the least modification possible of the regulation at issue. The Applicant has demonstrated that the variance sought will allow the Applicant to place a reasonably sized pool on the Property. The Board is convinced that the Applicant tried to fit the pool within the building envelope but was constrained by Property's unique conditions as noted above. The Board also notes that the pool is quite narrow and further evidences the Applicant's intent to minimize the 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, 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



John Mills  
Chairman

If the use is not established within two (2) years from the date below the application becomes void.

Date November 7, 2018