

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: DAVID HAMILTON & DANA HAMILTON

(Case No. 12245)

A hearing was held after due notice on December 17, 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 4 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 located on the northwest corner of Dodd Avenue and Salisbury Street in the Seabreeze subdivision (911 Address: 207 Salisbury Street, Rehoboth Beach) said property being identified as Sussex County Tax Map Parcel Number 3-34-20.13-167.00.

1. The Board was given copies of the Application, a survey of the Property dated March 25, 2016, pictures, 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 or in opposition to the Application.
3. The Board found that Dana Hamilton was sworn in to testify about the Application. Blake Carey, Esquire, presented the case on behalf of the Applicants.
4. The Board found that Mr. Carey stated that the Property, which is located in Seabreeze, is unique because it is a smaller sized corner lot. The corner setback requirement pushed the house east.
5. The Board found that Mr. Carey stated that there is no place to place the pool without a variance.
6. The Board found that Mr. Carey stated that the Property cannot otherwise be developed because placing the pool in the rear yard would also require a variance.
7. The Board found that Mr. Carey stated that the placement of the pool is also limited by where the oil tank and HVAC unit are located. Door access also limits the placement option for the pool.
8. The Board found that Mr. Carey stated that the dwelling, which is oddly oriented on the lot, was on the Property when the Applicants purchased the lot.
9. The Board found that Mr. Carey stated that the Applicants did not create the small lot size but bought the Property as it is currently.
10. The Board found that Mr. Carey stated that the variance will not alter the essential character of the neighborhood as there are a number of pools in the area. A similar pool was approved in 2017 in Seabreeze.
11. The Board found that Mr. Carey stated that there is no issue with the neighbor to the east.
12. The Board found that Mr. Carey stated that the pool will not be visible from the road.
13. The Board found that Mr. Carey stated that the variance requested is the minimum variance to afford relief.
14. The Board found that Ms. Hamilton affirmed the statements made by Mr. Carey as true and correct.
15. The Board found that Mr. Carey stated that the pool is small and will not impact neighbors.


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 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 corner lot with a curved property line at the intersection of Dodd Avenue and Salisbury Street. The dwelling was constructed by a prior owner at the appropriate setback distances from Dodd Avenue and Salisbury Street but the dwelling was constructed at an odd angle; likely due to the unique shape of the lot. As a result of this unique condition, the building envelope of the rear and side yard along the northeast 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 northeast 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 side 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.
 - c. The exceptional practical difficulty was not created by the Applicants. There was no evidence that the Applicants created the unique curvature of the southwest 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 un rebutted evidence confirms that there are other pools in the neighborhood. The Applicants will construct a fence 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



John Mills
Chairman

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

Date March 5, 2019