

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: MICHAEL L. MILLER & ALISON F. MILLER

(Case No. 12264)

A hearing was held after due notice on February 4, 2019. The Board members present were: Mr. Dale Callaway, Ms. Ellen Magee, Mr. John Mills, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for variances from the rear yard and front yard setback requirements for existing structures.

Findings of Fact

The Board found that the Applicants are seeking a variance of 1.4 feet from six (6) feet rear yard setback requirement for an existing swimming pool and a variance of 1.6 feet from six (6) feet rear yard setback requirement for an existing swimming pool. This application pertains to certain real property on the northwest corner of North Aquarius Way and West Gemini Lane within the Cave Colony subdivision (911 Address: 7 North Aquarius Way, Milton), Tax Map Parcel Number 2-35-21.00-53.00.

1. The Board was given copies of the Application, a survey of the Property dated December 3, 2018, assessment records, a picture of the Property, 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 Michael Miller and Alison Miller were sworn in to testify about the Application.
4. The Board found that Mr. Miller testified that the Applicants purchased the Property in August 2018 and learned at settlement that the Property did not in comply with the Sussex County Zoning Code.
5. The Board found that Mr. Miller testified that the pool was placed on the Property by a prior owner without a permit.
6. The Board found that Mr. Miller testified that the Property is serviced by septic and well. The septic system is to the rear of the house and north of the pool and the well is located on the other side.
7. The Board found that Mr. Miller testified that the pool cannot be placed elsewhere on the lot.
8. The Board found that Mr. Miller testified that there have been no complaints from neighbors.
9. The Board found that Mr. Miller testified that the pool was existing and to move the pool would render it unusable and it would have to be replaced.
10. The Board found that Mr. Miller testified that the pool will not alter the character of the neighborhood as it is totally enclosed and not visible to neighbors.
11. The Board found that Mr. Miller testified that the requested variances are the minimum variances necessary to afford relief.
12. The Board found that no one appeared in support of or in opposition to the Application.
13. 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 due to its shape and development. The Property is a corner lot with angled side property lines that create a uniquely shaped lot and building envelope. The Property is also developed by a septic system which takes up a significant portion of the rear yard and building envelope. These unique characteristics limit the buildable area available to the Applicants and have created an exceptional practical difficulty for the Applicants who seek to retain an existing pool on the lot. The Board notes that the pool, dwelling, and other structures were placed on the lot by a prior owner and the area where the pool could reasonably be located is quite limited.
- 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 shape and the buildable area thereof is limited due to this shape. The buildable area is also greatly limited by the location of the septic system. The Applicants seek to retain an existing pool on the lot 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 a reasonably sized pool to remain on the lot. 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. Lastly, the Board notes that the pool is located to the rear of the existing dwelling and adjacent to a concrete pad. The location of the pool in proximity to the home is reasonable and relocation of the pool elsewhere on the lot is neither practical or feasible given the lot's existing conditions.
- c. The exceptional practical difficulty was not created by the Applicants. The Applicants did not create the unusual shape of the Property. The lot was created and developed by a prior owner. The unique lot shape has resulted in a limited building envelope on the Property and the limited building envelope has created the exceptional practical difficulty. The unique characteristics of the Property are clear when reviewing the survey. The lot is further limited by the location of the septic system. The Board is convinced that the exceptional practical difficulty was not created by the Applicants but was created the lot's unique characteristics. The Board also notes that the Applicants only recently acquired the Property and did not place any of the structures on the lot.
- 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 structures will have no effect on the character of the neighborhood. The pool is located to the rear of the home and is not visible to neighboring properties. Importantly, no party appeared in opposition to present testimony that the variances would somehow alter the essential character of the neighborhood. This lack of evidence is telling since the pool has been on the Property for some time.
- 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 retain an existing pool on the lot. No additions or modifications to the pool is proposed.
- f. The Board also notes that the Property is improved by a garage and shed which encroach into the setback areas but certificates of occupancy were issued for those structures and they will be handled through the administrative variance process.

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. 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 19, 2019