

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

**IN RE: CHARLES HUMPHREYS & PATRICIA HUMPHREYS**

**(Case No. 12380)**

A hearing was held after due notice on November 4, 2019. The Board members present were: Dr. Kevin Carson, Mr. Jeff Chorman, Ms. Ellen Magee, Mr. John Williamson, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for a variance from the side yard setback requirement for an existing structure.

Findings of Fact

The Board found that the Applicants are seeking a variance of 5.6 feet from the ten (10) feet side yard setback requirement on the north side for a temporary pool. This application pertains to certain real property located on the west side of West Lagoon Drive approximately 228 feet south of North Dogwood Road in the Dogwood Acres subdivision (911 Address: 30881 West Lagoon Road, Dagsboro); said property being identified as Sussex County Tax Map Parcel Number 1-34-6.00-81.00. After a hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, an aerial photograph of the Property, property assessment information, a building permit application, a survey of the Property dated August 1, 2019, and a portion of the tax map of the area.
2. The Board found that the Office of Planning & Zoning received one letter in support of or no correspondence in opposition to the Application.
3. The Board found that Charles Humphreys and Patricia Humphreys were sworn in to testify about the Application. Taylor Trapp, Esquire, appeared on behalf of the Applicants.
4. The Board found that Ms. Trapp stated that the Applicants request the variance for a temporary swimming pool which will be removed during the winter months. The pool is a portable inflatable pool which is greater than 18" deep so it is required to meet the setback requirements.
5. The Board found that Ms. Trapp stated that the pool will be located 4.4 feet from the side property line.
6. The Board found that Ms. Trapp stated that the Property is unique as it is a shallow lot.
7. The Board found that Ms. Trapp stated that, due to the configuration of the lot and the placement of the septic system, the pool cannot be placed in any other location.
8. The Board found that Ms. Trapp stated that the Applicants did not create the exceptional practical difficulty as the largest portion of the yard has a drainage field and the pool cannot be placed in that location.
9. The Board found that Ms. Trapp stated that the drainage system was already in existence prior to the house being built.
10. The Board found that Ms. Trapp stated that there is a shed and retention pond in the rear.
11. The Board found that Ms. Trapp stated that the variance will not alter the character of the neighborhood as this pool is a temporary pool and only used during the summer months.
12. The Board found that Ms. Trapp stated that the pool has been there in the past.
13. The Board found that Ms. Trapp stated that there are similar temporary pools in the neighborhood.

14. The Board found that Ms. Trapp stated that the variance requested is the minimum variance to afford relief.
15. The Board found that Mr. Humphreys affirmed the statements made by Ms. Trapp as true and correct.
16. The Board found that Mr. Humphreys testified that the pool, which holds 3,284 gallons of water, takes a couple of days to fill up.
17. The Board found that Mr. Humphreys testified that he contacted Scott West of Septic Systems who told him that it would not compromise the septic system. Mr. Humphreys also contacted Brian at DNREC and was told that this type of pool did not violate any codes.
18. The Board found that Mr. Humphreys testified that he intends to place a privacy fence around the pool to comply with County Code.
19. The Board found that Mr. Humphreys testified that the Applicants have owned the Property since 1996 and the house was built in 2018.
20. The Board found that Mr. Humphreys testified that the pool is 3.5' deep and is 15' wide.
21. The Board found that Mr. Humphreys testified that the pool is easily removable and the pool was moved when the new house was built. The Applicants previously had a similar pool on the Property with a prior house and, according to Mr. Humphreys, there were no complaints about the prior pool.
22. The Board found that Mr. Humphreys testified that the neighbor has a mound septic system.
23. The Board found that Keith Springer and Linda Springer were sworn in to give testimony in opposition to the Application. Mr. Springer submitted exhibits for the Board to review.
24. The Board found that Mr. Springer testified that he lives next door to the Applicants and the Applicants had a pool in previous years.
25. The Board found that Mr. Springer testified that the Applicants built a new home but neglected to plan for the pool and he believes that the exceptional practical difficulty was created by the Applicants as they failed to plan for placement of the pool when building the new home.
26. The Board found that Mr. Springer testified that he complained about the pool when it was first placed.
27. The Board found that Mr. Springer testified that the pool drains into his drainfield and towards the road.
28. The Board found that Mr. Springer testified that there is one other pool in the neighborhood.
29. The Board found that Mr. Humphreys testified that there is nowhere else to place the pool.
30. The Board found that Mr. Humphreys testified that, only after construction was completed, did they learn about the septic location.
31. The Board found that Mr. Humphreys testified that the water will not run into the neighboring property.
32. The Board found that Mr. Humphreys testified that they had a smaller pool but could not use it.
33. The Board found that Mr. Humphreys testified that there is a concrete pad off the garage.
34. The Board found that Mr. Humphreys testified that the shed is also used as a garage.
35. The Board found that Mr. Humphreys testified that the pool drains in the side yard when the plug is pulled. A pipe also drains from the Applicants' gutter system to the swale.
36. The Board found that Mr. Humphreys testified that the septic system was installed when the house was built.

37. The Board found that Ms. Springer testified that a significant amount of run off occurs during rainstorms and is concerned with the amount of water that would be dumped onto the ground when emptying the pool.
38. The Board found that no one appeared in support of and two parties appeared in opposition to the Application.
39. 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 failed to meet the standards for granting a variance. The findings below further support the Board's decision to deny the Application.
  - a. The Applicant failed to demonstrate that the Property had a unique physical condition which created an exceptional practical difficulty. The lot consists of 0.358 acres and the building envelope is reasonably sized. With this reasonable building envelope, the Applicants constructed a new home in 2018 and retained an existing shed on the Property. The Applicants testified that they previously had a similar pool on the lot with their prior home but it is clear that the Applicants failed to design their new home with a plan for the placement of this pool. While the home meets the setback requirements, the pool does not. The Applicants argued that the lot is small and that the septic system limits the placement of the pool but the septic drainfield only takes up a small portion of the rear building envelope. Rather, from the survey, it is clear that the Applicants have utilized significant portions of their building envelope for the dwelling, a concrete pad, decks, a driveway, and a shed. Had the Applicants made other arrangements during the design process, perhaps they could have fit the pool on the Property without a variance. Instead, the Applicants have heavily developed the Property. The need for the variance was not created by some unique condition. Rather, the need for the variance was created by the Applicants development thereof.
  - b. The Applicants failed to prove that the Property could not be developed in strict conformity with the Sussex County Zoning Code. The Property is already developed with a house, multiple decks, a shed, and parking areas. The Applicants designed the Property without considering the location of the pool and the Applicants chose to develop the Property in its current condition. Despite having a blank slate to develop the Property, the Applicants failed to place the pool in compliance with the Code. Assuming, *arguendo*, that a pool is needed for the Applicants to reasonably use the Property, the Applicants also failed to demonstrate that the pool could not be located elsewhere on the Property. The southside of the Property is used for a concrete pad and driveway and a pool, which is easily moveable, may be able to be located there. The Board was simply not convinced that the Applicants could not otherwise place the pool on the Property in compliance with the Code. Perhaps the pool would not be in the exact location where the Applicants want it to be located but the Property appears to have room for the Applicants to construct a reasonably sized pool in compliance with the Sussex County Zoning Code; albeit the Applicants may have to reconsider their use of certain portions of the lot. For these reasons, the Board finds that the Property could be developed in strict conformity with the Code and that the variance is not necessary to enable reasonable use of the Property.
  - c. The Board finds that the Applicants are creating their own exceptional practical difficulty by placing the pool which does not fit within the building envelope. The Applicants' decision to place this pool in this location is the reason for the need for a variance and has nothing to do with the size,

shape, or condition of the Property. There is no unusual condition to the Property which has created this difficulty. The building envelope appears to otherwise be able to fit a pool without the need for the variance. The lot certainly has the space for other development such as the house which was designed and built in compliance with the Code. The Board was not convinced that the variance request was the product of a *need*. Instead, the variance request appears to be the product of a *want* as the Applicants seek to place the pool as proposed for purposes of convenience, profit, and / or caprice. Since the Applicants can place a pool that can comply the Sussex County Zoning Code or otherwise develop the lot in compliance with the Code, the need for the variance is something created by the Applicants' wants rather than an unusual physical condition relating to the Property. The Applicants have thus created their own exceptional practical difficulty. Furthermore, as previously discussed, the Applicants previously had a largely blank slate upon which to design and construct their home with a pool but failed to adequately plan for this design and use.

- d. The Board was convinced by neighbors that the location of the pool would substantially or permanently impair the use of neighboring and adjacent property and be detrimental to the public welfare. The lot to the north is serviced by a septic system near the shared property line. There is a swale between those properties and the Applicants' gutter system drains to the swale as does the pool when it is drained. The opposition testified that there are flooding problems in that area during heavy rains and when the pool is drained. Since the pool takes days to fill up and consists of approximately 3,200 gallons, the resulting puddling and runoff should not be unexpected. The neighbors concerns about the impact of the runoff from the pool when drained are reasonable.
- e. Since the variance is not necessary to enable the reasonable use of the Property, the Board also finds that the variance requested is not the minimum variance necessary to afford relief. Furthermore, the Board finds that no variance is needed to afford relief since the property is already reasonably developed without a pool and, to the extent a pool is needed for reasonable use, there is space to place a reasonably sized pool on the Property in compliance with the Sussex County Zoning Code; albeit not in the Applicants' preferred location.

The Board denied the variance application finding that it failed to meet the standards for granting a variance.

Decision of the Board

Upon motion duly made and seconded, the variance application was denied. The Board Members in favor of the Motion to deny were Dr. Kevin Carson, Ms. Ellen Magee, Mr. John Williamson, and Mr. Brent Workman. Mr. Jeffrey Chorman voted against the Motion to deny the variance application.

BOARD OF ADJUSTMENT  
OF SUSSEX COUNTY



Ellen M. Magee  
Chair

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

Date January 7, 2020