

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: LLOYD HARRISON

(Case No. 12449)

A hearing was held after due notice on July 20, 2020. The Board members present were: Dr. Kevin Carson, Ms. Ellen Magee, Mr. John Williamson and Mr. Brent Workman.

Nature of the Proceedings

This is an application for variances from the front yard setback and maximum fence height requirements.

Findings of Fact

The Board found that the Applicant is requesting a variance of 17 feet from the thirty (30) feet front yard setback requirement from Anna B Street for a swimming pool and a variance of 2.5 feet from the maximum fence height requirement of 3.5 feet for a fence. This application pertains to certain real property that is a through lot located on the southeast side of Robinsons Drive approximately 620 feet southwest of Silver Lake Drive (911 Address: 38254 Robinsons Drive, Rehoboth Beach); said property being identified as Sussex County Tax Map Parcel Number 3-34-20.09-36.00. After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, an aerial photograph of the Property, photographs, a survey of the Property dated April 3, 2018, a drawing of the proposed pool location, a Power Point presentation, 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 and two letters in opposition to the Application.
3. The Board found that Lloyd Harrison was sworn in to testify about the Application.
4. The Board found that Mr. Harrison testified that he seeks to build a swimming pool with a fence adjacent to his garage on the side of the Property near Anna B Street.
5. The Board found that Mr. Harrison testified that the Property is location in the "Forgotten Mile" in Sussex County.
6. The Board found that Mr. Harrison testified that the Property is unique as it is one of 3 lots that are considered through lots and that the other two lots have pools along Anna B Street.
7. The Board found that Mr. Harrison testified that he considers Robinson Drive the front yard and Anna B Street, which is a dead-end street, as the rear yard and that Anna B Street comes to a dead-end approximately 94 feet from the Property.
8. The Board found that Mr. Harrison testified that the front of the house crosses the lots at an oblique angle shortening one side of the property by 9.07 feet.
9. The Board found that Mr. Harrison testified that the garage measures 22 feet by 26 feet and has been on the lot since the 1950s.
10. The Board found that Mr. Harrison testified that a geothermal heating / cooling system is located on the west side which leaves a narrow area to place the swimming pool. The well measures approximately 10 feet wide.
11. The Board found that Mr. Harrison testified that the garage is 26.5 feet from the edge of paving of Anna B Street and that the garage was built by a prior owner.
12. The Board found that Mr. Harrison testified that the swimming pool cannot be constructed without the variance.
13. The Board found that Mr. Harrison testified that the pool would end 13 feet from the property line and would be 27.5 feet from the edge of pavement of Anna B Street.

14. The Board found that Mr. Harrison testified that the exceptional practical difficulty was not created by the Applicant as the garage was constructed on the lot prior to the current ownership.
15. The Board found that Mr. Harrison testified that the geothermal field further restricts the buildable area.
16. The Board found that Mr. Harrison testified that the variances will not alter the essential character of the neighborhood as the adjacent two properties have swimming pools in the rear of their through lots which border on Anna B Street and those lots have 5 foot tall fences.
17. The Board found that Mr. Harrison testified that the neighboring pools are 22 feet from the road and 16 feet from the road. Those pools were built perpendicular to the side yard but the proposed pool will be built parallel to the side yard.
18. The Board found that Mr. Harrison testified that the variances requested are the minimum variance requests to afford relief without hazarding the garage foundation, the geo-thermal wells and piping, or blocking the rear entrance to the dwelling.
19. The Board found that Mr. Harrison testified that there is no other place to put the pool.
20. The Board found that Mr. Harrison testified that he purchased the Property in 2000 and obtained the variance for the garage.
21. The Board found that Mr. Harrison testified that the pools on the adjacent lots were installed in 2008 on through lots with no garages.
22. The Board found that Mr. Harrison testified that the pool will measure 10 feet by 22 feet and will be 4 feet from the garage and will not affect the foundation of the garage.
23. The Board found that Mr. Harrison testified that he installed the well and he tore down the old house and built a new one in 2017 which was the reason for the prior variance.
24. The Board found that Mr. Harrison testified that he did not want to remove the garage because it is worth more to him than the pool.
25. The Board found that Mr. Harrison testified that the walkway and fence will not affect the well.
26. The Board found that Mr. Harrison testified that there are no visibility issues on Anna B Street.
27. The Board found that staff provided permit history on other lots in the neighborhood.
28. The Board found that no one appeared in support of or opposition to the Application.
29. 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 prove that the variances sought are necessary for the reasonable use of the Property. The lot is already developed by a dwelling and garage. The garage was built in the 1950s and the Applicant received a variance in 2015 to allow the garage to remain on the lot. Rather than remove the garage and seek to construct the pool in compliance with the Code (or to minimize the need for a variance) the Applicant chose to retain the garage and to construct a pool outside the building envelope. This proposal effectively increases the degree of nonconformity on the lot. The Applicant has not convinced the Board that the pool and fence are needed to reasonably use the lot. Rather, the Applicant has already heavily developed the lot as noted above. The Applicant has also chosen not remove the garage because it is worth more to him than the pool.
 - b. The Board finds that the Applicant is creating his own exceptional practical difficulty by proposing to a construct a pool and fence which does not fit within the building envelope. The Applicant's decision to construct this pool and fence in this location is the reason for the need for the variances 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. Rather, the Applicant has chosen to overbuild his property with these structures. The Board notes that variances were granted in 2015 for the dwelling and garage. The garage has been on the lot for over 60 years and the dwelling replaced a prior dwelling on the lot in a similar building envelope as the prior dwelling. While those structures received variances, the structures either existed prior to zoning or replaced prior nonconforming structures. Now the Applicant seeks to expand and further develop his lot while not conforming to the Sussex County Zoning Code. The Applicant's decision to construct this pool and fence in this location on a lot which has been heavily developed is the reason for the need for a variance and has nothing to do with the size, shape, or condition of the Property. The Board was not convinced that the variance requests were the product of a *need*. Instead, the variance requests appear to be the product of a *want* as the Applicant seeks to build the pool and fence as proposed for purposes of convenience, profit, and / or caprice. The Applicant has thus created his own exceptional practical difficulty.

- c. Since the variance is not necessary to enable the reasonable use of the Property, the Board also finds that the variances requested are not the minimum variances necessary to afford relief.

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. No Board Member voted against the Motion to deny the variance application. Mr. Jeffrey Chorman did not participate in the discussion or vote on this 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 September 21, 2020