

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: NANCY TANKELSON AND FRANCOIS REVERDY

(Case No. 11693)

A hearing was held after due notice on January 4, 2016. The Board members present were: Mr. Dale Callaway, Mr. John Mills, Mr. Jeff Hudson, Mr. Norman Rickard, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for a variance from the height requirement for a fence.

Findings of Fact

The Board found that the Applicants are seeking a variance of 0.5 feet from the 3.5 feet height requirement for a fence. This application pertains to certain real property located on the southeast corner of Josephine Street and Fisher Street (911 Address: 38386 Josephine Street, Rehoboth Beach); said property being identified as Sussex County Tax Map Parcel Number 3-34-20.09-138.00.

1. The Board was given copies of the Application and a survey of the Property dated August 25, 2004.
2. The Board found that the Office of Planning & Zoning received had not received any correspondence in support of the Application and one (1) letter in opposition to the Application.
3. Nancy Tankelson and Francois Reverdy were sworn in to testify about the Application.
4. The Board found that Mr. Reverdy testified that the Board approved a variance for an in-ground pool in October 2015.
5. The Board found that Mr. Reverdy testified that the Sussex County Zoning Code requires a four (4) feet high fence surround an in-ground pool. Specifically, the Code requires that the fence along Josephine Street and portions of the rear yard not exceed 3.5 feet tall.
6. The Board found that Mr. Reverdy testified that the proposed fence will not exceed the maximum height requirement on the opposite side of the Property as the height requirement on that side of the Property is higher.
7. The Board found that Mr. Reverdy testified that the variance requested is the minimum variance to afford relief.
8. The Board found that Mr. Reverdy testified that the Applicants intend to plant shrubs around the fence to screen it from view.
9. The Board found that Mr. Reverdy testified that the corner lot and fence requirement for an in-ground pool create a unique situation.
10. The Board found that Mr. Reverdy testified that the variance is necessary to enable reasonable use of the Property. The Applicants cannot build the pool without the variance and the variance is only needed for a portion of the proposed fence.
11. The Board found that Mr. Reverdy testified that the difficulty was not created by the Applicants.
12. The Board found that Mr. Reverdy testified that the variance will not alter the essential character of the neighborhood.
13. The Board found that Ms. Tankleson testified that she suffers from a disability and needs the pool for exercise. The pool had to be of a certain length in order to swim laps and the pool had to be located in its location due to the location of some geo-thermal wells on the Property.

14. The Board found that Mr. Reverdy testified that, had they known at the time of the previous application of the fence height requirement, they would have included that request in their prior application.
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, 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 situation is unique as the Applicant suffers from a disability and needs a pool in order to exercise. The Applicant needs a pool that is long enough to allow for her to swim laps and the Applicants previously obtained a variance to allow them to construct an in-ground pool on the Property. After obtaining the variance, the Applicants discovered that a variance from the fence height requirement was also necessary because the Property is a corner lot. The corner lot setback requirement limits the height of the fence along Josephine Street and a portion of the rear yard to 3.5 feet tall but the Sussex County Zoning Code requires that the fence surrounding the pool be no less than 4 feet. The uniqueness of this situation has created an exceptional practical difficulty for the Applicants who seek to place a fence around the pool.
 - 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. Due to the uniqueness of the Property and the Applicant's disability, the Applicants previously obtained a variance for the construction of a pool. The recent discovery of the need for a variance for a portion of the fence required to surround the pool has led to this Application. The Applicants seek to place a pool of reasonable size but are unable to do so without violating the Sussex County Zoning Code because of conflicting Code provisions regarding fence heights. The fence surrounding the pool needs to be at least 4 feet tall but the Code does not permit a fence taller than 3.5 feet along Josephine Street and a portion of the rear yard. 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 fence to be placed on the Property to surround the pool. The Board is convinced that the shape and location of this fence are also reasonable, which is confirmed when reviewing the survey provided by the Applicants. The Board notes that the fence height variance is only for the portion of the fence along Josephine Street and along 15 feet of the rear yard closest to Josephine Street.
 - c. The exceptional practical difficulty was not created by the Applicants. The Applicant did not create the unusual size of the Property or the conflicting Code provisions regarding fence height. The Applicants are simply unable to construct a pool as previously approved without a fence that exceeds the height limitations along a portion of the Property. The uniqueness of this situation is clear to the Board and the Board finds that the Applicants have not created this difficulty. Furthermore, the Applicant suffers from a disability and needs a pool in order to exercise safely. The Applicant's disability has also contributed to the uniqueness of the situation as her disability led to the initial request for a variance for the pool.
 - 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 fence will have no effect on the character of the neighborhood. The variance in the fence height is minimal and the fence will actually be lower along Josephine Street and the portion of the rear yard than it will be along other portions of the yard where the fence can be as high as 7 feet without a variance. The Board was not convinced by the neighbor who submitted a letter in opposition to the Application and argued that the Application would alter the character of the neighborhood.

- 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 construct a reasonably sized fence on the Property to meet the fence height requirements for a pool which is needed by the Applicants.
- f. The Board also finds that the Applicant suffers from a disability and that the variance approval represents a reasonable accommodation.

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, Mr. Jeff Hudson, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman. No Board Members voted against the Motion to approve the variance application.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY


Dale Callaway
Chairman

If the use is not established within one (1)
year from the date below the application
becomes void.

Date March 1, 2016