

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: RAYMOND B. NEWELL

(Case No. 11758)

A hearing was held after due notice on April 18, 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 width of the walkway around a pool requirement.

Findings of Fact

The Board found that the Applicant is seeking a variance one (1) foot from the three (3) feet width requirement for a walkway around a pool. This application pertains to certain real property located at the west side of Winding Brook Court approximately 1,075 feet west of Reynolds Road (911 Address: 14743 Winding Brook Court, Milton); said property being identified as Sussex County Tax Map Parcel Number 2-35-7.00-346.00.

1. The Board was given copies of the Application, a survey of the Property dated September 4, 2013, a receipt from Sussex County, a building permit issued on March 31, 2014, a portion of the tax map, and pictures of the Property.
2. The Board found that the Office of Planning & Zoning had not received any correspondence in support of or in opposition to the Application.
3. The Board found that Raymond Newell and Douglas Arcos were sworn in to testify about the Application.
4. The Board found that Mr. Newell testified that the mistake was discovered after the pool was installed. He and the pool installer discussed the option of having less than a three (3) foot walkway around the entire pool.
5. The Board found that Mr. Newell testified that there is one (1) foot of pavers and one (1) foot of stone between the pool and fence.
6. The Board found that Mr. Newell testified that he was unaware of a need for the variance.
7. The Board found that Mr. Newell testified that only a portion of the walkway and the opposite side of the pool has the minimum three (3) foot walkway.
8. The Board found that Mr. Newell testified that there are no issues to access the pool from that side for maintenance.
9. The Board found that Mr. Newell testified that the fence and underground irrigation would have to be relocated to bring the walkway into compliance.
10. The Board found that Mr. Newell testified that the neighbors have no objection to the Application.
11. The Board found that Mr. Arcos testified that he is the contractor retained by the Applicant. He showed his plans to the permitting office and he made a mistake and overlooked the three (3) foot walkway requirement noted on the permit application.
12. The Board found that no parties 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.

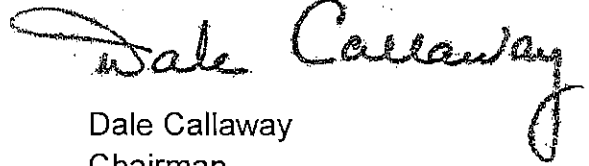
- a. The situation is unique because the Applicant relied on an experienced contractor to install a walkway around his pool. The contractor made a mistake in constructing the walkway narrower than allowed under the Sussex County Zoning Code. The fence and underground irrigation system would need to be relocated in order for the walkway to be widened per the Code and this would be a great and unnecessary expense for the Applicant. The Board finds that this unique situation has created an exceptional practical difficulty for the Applicant.
- b. Due to the uniqueness of the situation, the walkway cannot be developed in strict conformity with the Sussex County Zoning Code. The Applicant relied on his contractor to install a walkway around his pool but the contractor made a mistake in constructing the walkway. The walkway is narrower than allowed but it cannot be expanded without great expense due to the location of an existing fence and irrigation system. The variance is thus necessary to enable reasonable use of the Property as it will allow the narrower walkway to remain. The Board is convinced that the shape and location of the walkway are reasonable (which is confirmed when reviewing the pictures) and that the variance is necessary to enable the reasonable use of the Property.
- c. The exceptional practical difficulty was not created by the Applicant. The Applicant relied on his contractor to construct the walkway in compliance with the Sussex County Zoning Code and the builder failed to meet this requirement.
- 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 walkway will not have a negative impact on the neighborhood. 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 and the Applicant testified that neighbors support the Application.
- 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 Applicant has demonstrated that the variance sought will allow the Applicant retain a walkway around his pool on the Property.

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 June 21, 2016