

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: PAUL H. NYE & JEROME V. HOFER

(Case No. 12607)

A hearing was held after due notice on September 20, 2021. The Board members present were: Mr. John T. Hastings, Mr. Jordan Warfel, and Mr. John Williamson.

Nature of the Proceedings

This is an application for variances from maximum fence height requirement for a proposed fence.

Findings of Fact

The Board found that the Applicants are requesting a variance of 0.5 feet from the 3.5 foot maximum fence height requirement in the front yard setback. The property is located on the south side of South Fieldway Court within the Kings Creek Country Club Subdivision (911 Address: 2 South Fieldway Court, Rehoboth Beach) said property being identified as Sussex County Tax Map Parcel Number: 3-34-13.00-996.00. After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, Kings Creek Architectural Reviewed Committee application and approval, letters supporting the Application, a schematic drawing of the Property, a survey of the Property dated February 15, 2021, a site plan of the Property dated February 15, 2021, photographs, 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 four letters in support of the Application and no correspondence in opposition to the Application.
3. The Board found that Paul Nye was sworn in to give testimony about the Application.
4. The Board found that Mr. Nye testified that the Property has a unique shape and is long and narrow.
5. The Board found that Mr. Nye testified that the house was in its current location when the Applicants purchased the Property.
6. The Board found that Mr. Nye testified that there are trees on the lot and Kings Creek likes to preserve trees.
7. The Board found that Mr. Nye testified that the existing house faces Kings Creek Circle but it is addressed as 2 South Fieldway Court. He considers the portion of the lot closest to South Fieldway Court as the side yard.
8. The Board found that Mr. Nye testified that there is no other space to build a pool.
9. The Board found that Mr. Nye testified that the pool will be placed in the location of the existing basketball court. He noted that the basketball court was existing when the home was purchased by the Applicants.
10. The Board found that Mr. Nye testified that County Code is conflicting because it requires a 4 foot tall fence for safety around pools but only 3.5 foot tall fence is allowed in the front yard setback.
11. The Board found that Mr. Nye testified that the pool design and location have been approved by the Kings Creek HOA and letters of support have been submitted by neighbors as well.
12. The Board found that Mr. Nye testified that the Kings Creek HOA only allows fences around pools if the fences are screened and the Applicants have tried to fit the fence in with the existing landscape. He noted that the fence will be a black aluminum fence and will be located behind thick, existing landscaping.

13. The Board found that Mr. Nye testified that there are other pools in the neighborhood.
14. The Board found that Mr. Nye testified that there is a swale between the property line and South Fieldway Court. He estimated that there is approximately 30 feet between the edge of paving and the proposed location of the fence.
15. The Board found that Mr. Nye testified that this variance is the minimum variance of six inches to allow for a 4 foot tall safety fence.
16. The Board found that Mr. Nye testified that the fence will not create any visibility issues for pedestrians or motorists.
17. The Board found that no one appeared in support of or in opposition to the Application.
18. 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 as it is a lot with road frontages on two roads and is subject to a front yard setback and a corner front yard setback requirement. The portion of the Property along South Fieldway Court is effectively the side yard of the lot but is subject to corner front yard setback requirements. These conditions greatly restrict the building envelope on the Property. The lot was also developed by a prior owner and the only place where a reasonably sized pool can be located is in the area where a basketball court was previously located. The pool will comply with the setback requirements but the fence required for the pool will not. If the corner front yard was considered a side yard, no variance for the fence height would be required. It is clear to the Board that the lot's unique characteristics have created an unnecessary hardship and exceptional practical difficulty for the Applicants who seek to place fence on the lot.
 - b. The unnecessary hardship and exceptional practical difficulty are not being created by the provisions of the Sussex County Zoning Code.
 - c. Due to the uniqueness of the lot and its development by a prior owner, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property is bordered on two sides by roads and has unique setback requirements even though the Applicants can only access the Property from one of those roads. The Applicants seek to place a fence on the Property for a pool but are unable to do so without violating the Sussex County Zoning Code. The Board is convinced that the variance is necessary to enable the reasonable use of the Property as the variance will allow the Applicants to place a fence on the Property. The Board is convinced that the shape and location of the fence are also reasonable, which is confirmed when reviewing the survey provided by the Applicants. The fence is needed for the reasonable use of the Property because the Applicants are constructing a pool and a privacy fence is required for the pool. The Board notes that the privacy fence (which will meet the minimum fence height requirement for a pool fence) will be slightly larger than the fence height limitation for fences in the front yard.
 - d. The exceptional practical difficulty and unnecessary hardship were not created by the Applicants. The Applicants did not create the lot, otherwise develop the lot, or enact the setback requirements which have limited the building envelope of the lot. Rather, the Applicants only recently acquired the lot which was developed by a prior owner. The unique characteristics of the Property are clear when reviewing the survey. The Board is convinced that the exceptional practical difficulty and unnecessary hardship

were not created by the Applicants but was created the lot's unique characteristics. The Board also notes that the fence is needed to provide privacy for the pool.

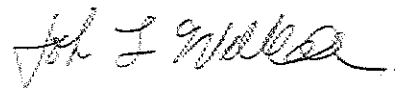
- e. The variance will not alter the essential character of the neighborhood nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare. The Board is convinced that the fence will have no effect on the character of the neighborhood. The fence has been approved by the homeowners association and neighbors have submitted letters supporting the request. The fence will be largely shielded from view by existing landscaping. The fence does not present visibility concerns along South Fieldway Court and will provide privacy for the pool. Furthermore, 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. Moreover, there is a large gap from the edge of paving of South Fieldway Court to the fence so the fence should not present any visibility concerns.
- f. 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 place a reasonably sized fence on the Property, which will meet the minimum height requirement for a pool fence. The Board notes that the fence will not be larger than is required to meet the pool fence height requirements.
- g. The condition or situation of the Property and the intended use of the Property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the Sussex County Zoning Code.

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 of the motion to approve were Mr. Travis Hastings, Mr. Jordan Warfel, and Mr. John Williamson. No Board Member voted against the Motion to approve the variance application. Dr. Kevin Carson and Jeffrey Chorman did not participate in the discussion or vote on this application.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY



John Williamson
Chair

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

Date November 15, 2024.