

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: JOHN DEWEY

(Case No. 12618)

A hearing was held after due notice on October 18, 2021. The Board members present were: Dr. Kevin Carson, Mr. Jeff Chorman, Mr. John T. Hastings, Mr. Jordan Warfel, and Mr. John Williamson.

Nature of the Proceedings

This is an application for variances from the side yard setback and rear yard setback requirements for a proposed swimming pool and pool equipment.

Findings of Fact

The Board found that the Applicant is requesting a variance of 5.1 feet from the ten (10) feet side yard setback requirement on the west side for a proposed swimming pool. This application pertains to certain real property located on the north side of Salisbury Street at the intersection of Salisbury Street and Dodd Avenue within the Seabreeze Subdivision (911 Address: 301 Salisbury Street, Rehoboth Beach) said property being identified as Sussex County Tax Map Parcel Number 3-34-20.13-168.00. After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a portion of the tax map of the area, an aerial photograph of the Property, a letter from the Seabreeze Homeowners Association, Inc., schematics, and a survey of the Property dated August 27, 2021.
2. The Board found that the Office of Planning & Zoning received two (2) letters in support of the Application and no correspondence in opposition to the Application.
3. The Board found that John Dewey and Rob McCubbin sworn in to testify about the Application.
4. The Board found that Mr. Dewey testified that he has owned the Property for over 30 years but the house was placed on the lot in 1975 by a prior owner.
5. The Board found that Mr. Dewey testified that the unusual shape of the lot has created the difficulty.
6. The Board found that Mr. Dewey testified that he worked with several contractors and all noted the need for a variance.
7. The Board found that Mr. Dewey testified that this is the only area on the Property to place a pool.
8. The Board found that Mr. Dewey testified that there are numerous pools in the Seabreeze neighborhood.
9. The Board found that Mr. Dewey testified that the neighbors support the request for a variance and the homeowners association has approved the request.
10. The Board found that Mr. Dewey testified that the house was already built when he purchased the Property.
11. The Board found that Mr. Dewey testified that the pool equipment will meet the setbacks
12. The Board found that Mr. McCubbin testified that the pool is a small pool measuring 350 square feet and 14.8 wide at its widest point and the pool will be 30.4 feet long.
13. The Board found that Mr. McCubbin testified that there will be a paver patio consisting of 450 square feet installed around the pool.
14. The Board found that Mr. McCubbin testified that the Property is a small, corner lot.
15. The Board found that Mr. McCubbin testified that the house is located towards the rear of the Property.

16. The Board found that Mr. McCubbin testified that the side yard is the only area to place a pool and that they explored other options.
17. The Board found that Mr. McCubbin testified that the pool will be at ground level.
18. The Board found that no one appeared in support of or in opposition to the Application.
19. 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 unrebutted, 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 due to its shape and development. The lot is a corner lot with an unusual shape. The front yard along Dodd Avenue is narrow and the lot burdened by the corner front yard setback requirement. The Property was also developed by a house in 1975 by a prior owner and the location of the house has limited the area where a pool could be located. These conditions have created an unnecessary hardship and exceptional practical difficulty for the Applicant who seeks to place a pool on the site.
 - 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, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property has unique physical characteristics and the buildable area thereof is limited due to those characteristics. The Applicant seeks to construct a pool on the lot but is 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 this reasonably sized pool to be constructed on the lot. The Board is convinced that the shape and location of the pool is also reasonable, which is confirmed when reviewing the survey provided by the Applicant. Notably, the pool consists of only 350 square feet and is not a wide pool.
 - d. The unnecessary hardship and exceptional practical difficulty were not created by the Applicant. As previously stated, the Property has unique conditions and these conditions have resulted in a limited building envelope on the Property. These conditions have created the unnecessary hardship and exceptional practical difficulty. Furthermore, the Applicant did not place the dwelling on the lot which reduced the area where a pool could reasonably be located.
 - 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 pool will have no effect on the character of the neighborhood. The homeowners association has approved the request and the unrebutted testimony confirms that there are numerous other pools in the neighborhood. No evidence was presented which demonstrates that the variance would somehow alter the essential character of the neighborhood.
 - 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 Applicant has demonstrated that the variance sought will allow the Applicant to construct a reasonably sized pool on the Property. The Board is convinced that the Applicant explored other options but was constrained by the unique conditions of the lot.
 - 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 Dr. Kevin Carson, Mr. Jeffrey Chorman, Mr. Travis Hastings, Mr. Jordan Warfel, and Mr. John Williamson. No Board Member voted against the Motion to approve the variance 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 December 13, 2021