

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: RENATA GRABIAK

(Case No. 12680)

A hearing was held after due notice on April 18, 2022. The Board members present were: Dr. Kevin Carson, Mr. Jeff Chorman, Mr. Jordan Warfel, and Mr. John Williamson.

Nature of the Proceedings

This is an application for variances from the side yard setback requirement for a proposed pool with walkway.

Findings of Fact

The Board found that the Applicant is requesting the following variances:

1. A variance of 4 feet from the ten (10) feet side yard setback requirement on the east side for a proposed pool; and
2. A variance of 10 feet from the ten (10) feet side yard setback requirement on the east side for a proposed elevated walkway and steps.

This application pertains to certain real property located on the south side of Arrowhead Drive within the Pine Crest Terrace Subdivision (911 Address: 30033 Arrowhead Drive, Ocean View); said property being identified as Sussex County Tax Map Parcel Number 134-9.00-156.00 ("the Property"). 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, a site plan of the Property dated September 22, 2020, and a portion of the tax map of the area.
2. The Board found that the Office of Planning & Zoning received no letters in support of or in opposition to the Application.
3. The Board found that Renata Grabiak was sworn in to testify about the Application.
4. The Board found that Ms. Grabiak testified that they are in the process of building a fiberglass, prefabricated pool measuring 30 feet by 14 feet which will have an automatic cover.
5. The Board found that Ms. Grabiak testified that they need to have 4 feet wide walking area around the pool for safety reasons and that they would need the variances in order to have the distance needed between the pool and the house for walking.
6. The Board found that Ms. Grabiak testified that the pool has to be elevated 2 feet above ground similar to the pool on neighboring lands which is also elevated 2 feet.
7. The Board found that Ms. Grabiak testified that the neighbors also have a pool and have no objection to the Applicant's pool or its placement.
8. The Board found that Ms. Grabiak testified that edge of the pool will be 6 feet from the side property line but the elevated walkway around the pool will go to the side property line. She noted that there will be steps to the rear of the walkway that will also project to the side yard property line.
9. The Board found that Ms. Grabiak testified that, without the variance, they will not be able to have a safe walkway around the pool for her family.
10. The Board found that Ms. Grabiak testified that there is limited space in their back yard and there is no other place to put the pool.
11. The Board found that Ms. Grabiak testified that the pool will not adversely affect the value of the property or the adjacent properties.

12. The Board found that Ms. Grabiak testified that the Property is very narrow and adjacent to the canal thereby limiting their buildable area.
13. The Board found that Ms. Grabiak testified that her pool will not affect the neighbors or their properties.
14. The Board found that Ms. Grabiak testified that they applied for the administrative variance and found that to be insufficient.
15. The Board found that Ms. Grabiak testified that they are asking for the minimum to construct the pool with walkway as explained.
16. The Board found that Ms. Grabiak testified that a smaller pool would be a different shape and unable to have an automatic cover. She noted that they looked at other pools and none of which would be able to use an automatic cover and this pool was recommended by Pools & Spas Unlimited. She also has small grandchildren and would prefer an automatic cover for an extra level of safety.
17. The Board found that Ms. Grabiak testified that they are unable to put a pool completely in the ground due to the property being in a flood zone.
18. The Board found that Ms. Grabiak testified that the neighbor's patio is raised and the proposed patio would be concrete and meet up to the neighbor's patio. According to Ms. Grabiak, the neighbor's patio is concrete and she proposes to construct her patio of either wood or concrete.
19. The Board found that Ms. Grabiak testified that she did not construct the house and they purchased the Property in 2013.
20. The Board found that Ms. Grabiak testified that she believes the septic system may be in the front yard but she is unsure as they did not consider placing the pool there.
21. The Board found that Ms. Grabiak testified that she does not know how many other neighbors have pools.
22. The Board found that Ms. Grabiak testified that the shed shown on the mapping system has been removed.
23. The Board found that Ms. Grabiak testified that they use the rear yard, facing the canal, to entertain guests and their family.
24. The Board found that Ms. Grabiak testified that there is a fence between her back yard and the neighbor's back yard and the fence is 6 feet tall. She also plans to fence in her rear yard.
25. The Board found that no one appeared in support of or in opposition to the Application.
26. 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 demonstrate that the Property was unique and that the uniqueness of the Property has created an exceptional practical difficulty. The lot is a rectangular lot measuring approximately 140 feet by 70 feet with no unusual conditions. The lot is not a small lot and appears to be of a similar size and shape as other lots in the neighborhood. Rather than develop the Property in compliance with the Code, the Applicant has requested to expand all the way to the side property line with a raised deck and steps. The proposed pool also does not fit within the building envelope. The Applicant did not convince the Board that there was some unique topography or other conditions which would render the Applicant unable to develop the Property in strict conformity with the Code or that those conditions have created an exceptional practical difficulty. Rather, the difficulty is clearly the result of the Applicant's proposed development of the Property within the setback area. As such, the Applicant has failed to

demonstrate that there was some unique condition which has created the exceptional practical difficulty.

- b. The Applicant failed to prove that the Property could not be developed in strict conformity with the Sussex County Zoning Code. The Property is already developed with a house and related structures and appears to otherwise comply with the Code. There are also large portions of the building envelope which have not been developed. Now, rather than comply with the Code, the Applicant proposes these structures which will encroach significantly into the setback areas. It is clear that the Applicant has chosen not to build in strict conformity with the Code rather than developing the lot to comply with the Code's setback requirements. While the location of the structures may not be the location the Applicant prefers, the Applicant failed to demonstrate that she could not otherwise comply with the Code's setback requirements. The Applicant are not entitled to have the structures in these locations or at all. Moreover, the Applicant chose to have a pool of this size rather than a smaller pool. For these reasons, the Board finds that the Property could be developed in strict conformity with the Code and that the variances are not necessary to enable reasonable use of the Property.
- c. The Board finds that the Applicant is creating her own exceptional practical difficulty by proposing to a construct structures which do not fit within the building envelope. The Applicant's decision to construct these structures in these locations is the reason for the need for 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. The lot is not irregularly shaped and the Board was not convinced that there was a unique condition that limits the Applicant's ability to reasonably develop the lot. 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 structures as proposed for purposes of convenience, profit, and / or caprice. Since the Applicant can develop the Property in compliance with the Sussex County Zoning Code, the need for the variances is something created by the Applicant's wants rather than an unusual physical condition relating to the Property. The Applicant has thus created her own exceptional practical difficulty.
- d. Since the variances are 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.
- e. The Board also has concerns about the effect of a raised deck project to the side property line as proposed. It would appear difficult to maintain the deck and steps without trespassing onto neighboring lands. While the neighbor has a similar raised deck, the neighbor's structure was granted a certificate of compliance in 2007. No variance was sought for that structure. The Board takes no position on the legality of the neighbor's patio but notes that the Applicant in this case has failed to demonstrate that she meets the standards for granting a variance.

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, Mr. Jeffrey Chorman, Mr. Jordan Warfel, and Mr. John Williamson. No Board Member voted against the Motion to deny the variance application. Mr. Travis Hastings 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 June 27, 2022