

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: MARY A. SCIOLE AND DANIEL M. SCIOLE

(Case No. 12691)

A hearing was held after due notice on May 16, 2022. 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 a variance from maximum fence height requirement for a proposed fence.

Findings of Fact

The Board found that the Applicants are requesting a variance of 2.5 feet from the 3.5 feet maximum height requirement for a proposed fence. The property is located on the corner of Balsa Street and Sally's Drive within the Quaint Acres Subdivision (911 Address: 37707 Balsa Street, Ocean View) said property being identified as Sussex County Tax Map Parcel Number: 134-16.00-829.00 ("the Property"). After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a survey of the Property dated August 17, 1995, photographs, application for Board Case No. 7680, Findings of Fact for Case No. 7680, 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 three (3) letters in support of and no correspondence in opposition to the Application.
3. The Board found that Mary Sciole and Daniel Sciole were sworn in to give testimony about the Application.
4. The Board found that Ms. Sciole testified that the Applicants purchased the Property in 2015 and the pool was already installed in its present location at that time.
5. The Board found that Ms. Sciole testified that the Property is unique.
6. The Board found that Ms. Sciole testified that the Balsa Street side of the Property has the garage and back entrance.
7. The Board found that Ms. Sciole testified that the former owners obtained a variance to place the pool.
8. The Board found that Ms. Sciole testified that the existing fence consists of wood pallets with an extra foot of lattice above it but the fence is splintering and nails are coming out of it and it is unsafe.
9. The Board found that Ms. Sciole testified that there are more children in the neighborhood now and she can see that animals could get in or over the fence as it is now.
10. The Board found that Ms. Sciole testified that the Applicants want to place a 6 feet fence rather than replace the 5 feet fence for added safety.
11. The Board found that Ms. Sciole testified that they are looking to improve the neighborhood and its safety.
12. The Board found that Ms. Sciole testified that the adjacent neighbor supports the request and the Applicants obtained letters from other neighbors in support.
13. The Board found that Ms. Sciole testified that the fence will be constructed of a vinyl material.
14. The Board found that Ms. Sciole testified that they do not need homeowner association approval.

15. The Board found that Ms. Sciole testified that there will be no visibility issues from the road.
16. The Board found that Ms. Sciole testified that the placement of the pool was likely determined by the septic at the time.
17. The Board found that Ms. Sciole testified that the property line is about 15 feet from the edge of paving of Balsa Street and that the fence will be located on the property line.
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 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 due as it is a lot with double front yard setback and a corner front yard setback that was developed with a house and pool by a prior owner after obtaining a variance. The pool is surrounded by a wooden fence that has become dilapidated and is unsafe and needs to be replaced. Since the Property has 2 front yard setbacks and a corner front yard setback, different fence height requirements limit the height of the fence but a pool is required to be surrounded by a fence that exceeds those fence height limitations. The Property was also previously improved by a septic system that limited where the pool could be located. These conditions have created an exceptional practical difficulty and unnecessary hardship for the Applicants who seek to replace a 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, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property is developed by a pool and a fence is needed to surround the pool but the existing fence needs to be replaced. The lot has unique conditions as it has a double front yard and a corner front yard. The Applicants need a taller fence to retain the pool but the Applicants are unable to replace the existing fence 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 replace a reasonably sized fence that has become dilapidated. The Board is convinced that the location of the fence is also reasonable, which is confirmed when reviewing the survey provided by the Applicants.
 - d. The exceptional practical difficulty and unnecessary hardship were not created by the Applicants. The Applicants did not create the lot conditions and place the pool or fence on the Property. Those conditions have created that need for a taller fence and the exceptional practical difficulty and unnecessary hardship. The unique characteristics of the Property are clear when reviewing the materials presented to the Board. 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.
 - 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. Neighbors appear to support the request and the fence will be located approximately 15 feet away from the edge of paving of Balsa

Street. No substantial evidence was presented which convinced the Board that the variance would somehow alter the essential character of the neighborhood or be detrimental to the public welfare. Furthermore, this barrier should improve the safety in the area by replacing an existing fence that was clearly dangerous.

- f. The variance sought is the minimum variance necessary to afford relief and the variance requested represent the least modification possible of the regulation at issue. The Applicants have demonstrated that the variance sought will allow the Applicants to replace a reasonably sized fence that is tall enough to meet the pool fence height requirements and to provide adequate privacy for the pool.
- 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 July 18, 2022