

**BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY
IN RE: ANN GEIS & DEAN GEIS**

(Case No. 12426)

A hearing was held after due notice on March 16, 2020. The Board members present were: Dr. Kevin Carson, Mr. Jeff Chorman, Ms. Ellen Magee, Mr. John Williamson, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for variances from the required walk space requirement between pool walls for a proposed swimming pool.

Findings of Fact

The Board found that the Applicants are requesting variances from the walk space requirement around a proposed swimming pool to allow for a walk space on two sides of the pool only. The Applicants propose that there would be no walk space on the north and east sides of the proposed pool. This application pertains to certain real property located on the east side of Kelly Lane in the Breakwater Beach subdivision (911 Address: 29323 Kelly Lane, Bethany Beach) said property being identified as Sussex County Tax Map Parcel Number: 1-34-5.00-436.00. After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, building plans, email correspondence with Planning & Zoning staff, an elevation certificate, a survey of the Property dated July 11, 2019, aerial photographs of the Property, and a portion of the tax map of the area.
2. The Board found that the Office of Planning & Zoning received no correspondence in support of or in opposition to the Application.
3. The Board found that Dean Geis and Jaime Toner were sworn in to testify about the Application. Mr. Geis submitted a copy of the construction plans for the Board to review.
4. The Board found that Mr. Geis testified that the Applicants purchased the Property in August 2019 and seek to install a pool on an existing deck to the northeast side of the house.
5. The Board found that Mr. Geis testified that the neighborhood has approved the pool and that his neighbors do not object to the request.
6. The Board found that Mr. Geis testified that he is diabetic and his wife is immune compromised and they use pools for aerobics.
7. The Board found that Mr. Geis testified that they propose to construct a narrow walkway on the northeast side of the pool but the walkway will not meet the 3 foot requirement of the Code
8. The Board found that Mr. Geis testified that the pool will be elevated and not seen from neighboring lands.
9. The Board found that Mr. Geis testified that the proposed pool will measure 10 feet by 20 feet and is the smallest pool available.
10. The Board found that Ms. Toner testified that, if the pool were at grade, you would need that distance of 3 feet between the barrier and pool for safety reasons. In this case, however, there is a deck railing measuring 3 feet tall adjacent to the pool.
11. The Board found that Mr. Geis testified that the neighbor to the north has a pool.
12. The Board found that Mr. Geis testified that Property is unique as it is in a flood zone and is affected by the location of the DNREC building line.
13. The Board found that Mr. Geis testified that the pool could not be placed elsewhere on the Property because of the lot's physical conditions.

14. The Board found that Mr. Geis testified that the Applicants did not create the DNREC restrictions and are making an effort to maximize the space within the allowable limits.
15. The Board found that Mr. Geis testified that the Applicants would lose the functionality of the deck if the variance is not granted.
16. The Board found that Mr. Geis testified that the variance will not alter the essential character of the neighborhood as there is a pool to the north and the community now allows residents to install swimming pools.
17. The Board found that Mr. Geis testified that the variances are the minimum variances necessary to afford relief.
18. The Board found that no one appeared in support of or in opposition to the Application and that no comments were submitted electronically.
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 as it is a long, narrow lot subject to DNREC building restrictions. The Property is adjacent to beaches of the Atlantic Ocean and much of the easterly side of the lot is undevelopable due to the DNREC building restrictions. The Applicants only recently acquired the Property and it was developed by prior owners with the existing house and deck. The Applicants seek to use a portion of the deck for a pool but are unable to fit a small pool in that area while still meeting the Code requirements. The Property's unique conditions have created an unnecessary hardship and exceptional practical difficulty for the Applicants who seek to build a pool 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 Property and the situation, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Applicants seek to build a small pool on the lot but are unable to do so while complying with the Sussex County Zoning Code. The Board is thus convinced that the variances are necessary to enable the reasonable use of the Property as the variances will allow the Applicants to build a small pool on the lot. The Board is convinced that the size, shape, and location of the pool are reasonable. The Board also notes that the pool will be elevated 10 feet and is a walk space around portions of the pool is not as necessary because the pool is on an existing deck surrounded by a deck fence on the areas where no walkway will be located.
 - d. The unnecessary hardship and exceptional practical difficulty were not created by the Applicants. As discussed above, the Property has unique conditions which have limited the Applicants' ability to reasonably develop the Property. The Applicants did not create the unique conditions of the lot or construct the original house. The Board was convinced that the Applicants have not created the exceptional practical difficulty and unnecessary hardship. Furthermore, the Board is convinced that the Applicants did not come to the Property with an illegal use in mind. Rather, the Applicants are limited by the physical conditions of the Property and the prior development thereof and the Applicants need the variances in order to reasonably develop the Property as proposed.
 - e. The variances 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 variances will have no effect on the character of the

neighborhood. The variances will allow the Applicants to construct a small pool on an existing deck. There were no complaints about the location of the pool from neighbors and the homeowners association has approved the request. Likewise, there was no objection to the proposed addition and no evidence was presented which demonstrate that the variances would somehow alter the essential character of the neighborhood or be detrimental to the public welfare.

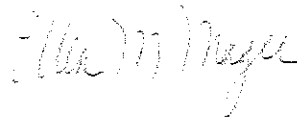
- f. The variances sought are the minimum variances necessary to afford relief and the variances requested represent the least modifications possible of the regulation at issue. The Applicants have demonstrated that the variances sought will allow the Applicants to construct a small pool for aerobics. The pool is very small and the Board finds that the Applicants have taken measures to minimize the need for the variances.
- g. The Board notes that the Applicants suffer from medical problems and the pool is necessary for them to exercise.
- h. 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, Ms. Ellen Magee, Mr. John Williamson, and Mr. Brent Workman. No Board Member voted against the Motion to approve the variance application.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY



Ellen M. Magee
Chair

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

Date May 5, 2020