

## BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

### IN RE: AMY S. MILLER AND MARK MILLER (Case No. 10933)

A hearing was held after due notice on February 6, 2012. The Board members present were: Mr. Jeff Hudson, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman.

#### Nature of the Proceedings

This is an application for variance from the maximum height requirement for a fence.

#### Findings of Fact

The Board found that the Applicant was seeking a variance of five (5) feet from the seven (7) foot maximum height requirement for a fence. The Applicants have requested that the aforementioned requested variance be granted as it pertains to certain real property located east of Road 277, 0.8 feet north of Cedar Grove Road; said property being identified as Sussex County Tax Map Parcel Number 3-34-11.00-81.02. After a hearing, the Board made the following findings of fact:

1. Amy Miller and Mark Miller testified on behalf of the Applicants.
2. The Board found that the Applicants have erected a twelve (12) foot fence on the side of their Property.
3. The Board found that the Applicants testified that they constructed the fence to deter acts of vandalism to their property and to block the view of a camera pointed at their property by their neighbors.
4. The Board found that the Applicants testified that they believe their neighbors monitor their daily activity and have slashed car tires, vandalized lawn ornaments, and their fence when they are not home.
5. The Board found that the Applicants testified that they obtained a permit to install the fence but did not understand the height requirement set forth in the permit.
6. The Board found that the Applicants testified that the vandalism has slowed since the fence has been erected.
7. The Board found that the Applicants testified that the fence is located four feet from the property line and withstood the winds of Hurricane Irene.
8. The Board found that the Applicants believe the fence enhances their privacy and offers protection from their neighbors.
9. The Board found that the Applicants submitted pictures of the Property and a petition from 55 supporters who are their friends.
10. The Board found that two neighbors submitted a joint letter expressing their thoughts on the Application. They did not support or deny the Application.
11. No persons appeared in opposition to or in support of the Application.
12. The Board decided to table the case until February 20, 2012.
13. At the Board's meeting on February 20, 2012, the Board discussed the Application and voted on it.
14. Mr. John Mills was not in attendance at the Board's meeting on February 20, 2012, but Mr. Dale Callaway was in attendance at that meeting. Mr. Callaway advised the Board that he listened to the audio tape of the February 6, 2012, hearing and reviewed all documents in the public record as it pertains to this Application.
15. The Board found that the difficulty was caused by the Applicants by failing to build the fence in conformity with the Sussex County Code.
16. The Board found that the Applicants could have planted trees as an alternative to erecting a fence in order to protect their privacy.

17. Based on the findings above and the testimony presented at the public hearing and the public record, the Board determined that the application failed to meet the standards for granting a variance. The Property was not unique and it could be developed in strict conformity with the Sussex County zoning ordinance. The difficulty was created by the Applicants by failing to build the fence within the height restrictions set forth in the Sussex County Code. The variance is not needed to enable reasonable use of the Property and the variance would alter the essential character of the neighborhood.

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 application was denied. The Board Members voting to deny the Application were Mr. Dale Callaway, Mr. Norman Rickard, and Mr. Brent Workman. Mr. Jeff Hudson voted against the Board's decision to deny the Application.

BOARD OF ADJUSTMENT  
OF SUSSEX COUNTY



Dale Callaway  
Chairman

Date March 22, 2012.