

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: EMIL LEWIS LESKO

(Case No. 11462)

A hearing was held after due notice on October 6, 2014. The Board members present were: Mr. Dale Callaway, Mr. Jeff Hudson, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman.

Nature of the Proceedings

This is application for a variance from the height limit requirement for a fence from the front yard and corner yard.

Findings of Fact

The Board found that the Applicant was seeking a variance of 3.5 feet from the 3.5 feet height limit for a solid fence along the front and corner (front) property lines. This application pertains to certain real property located southeast corner of Route 26 (Atlantic Avenue) and Diane Road and being Lot 1 within Howard Manor and being 650 feet east of Road 348 (Irons Lane) (911 Address: 31763 Diane Road, Ocean View, DE); said property being identified as Sussex County Tax Map Parcel Number 1-34-11.00-184.00). After a hearing, the Board made the following findings of fact:

1. The Board found that the Office of Planning & Zoning received no correspondence regarding the Application.
2. Emil Lewis Lesko was sworn in to testify about the Application and William Schab, Esquire, presented the Application to the Board. Mr. Schab submitted exhibits to the Board to review.
3. The Board found that Mr. Schab stated that the Property is located along Route 26 and that the Applicant has owned the Property for many years.
4. The Board found that Mr. Schab stated that the Applicant planted trees many years ago to create a sight and sound buffer from the traffic along Route 26 and Diane Road.
5. The Board found that Mr. Schab stated that the Delaware Department of Transportation ("DelDOT") recently widened Route 26 which resulted in the Applicant losing fifty (50) feet of his property bordering Route 26.
6. The Board found that Mr. Schab stated that DelDOT also removed the majority of the trees previously used as a buffer by the Applicant.
7. The Board found that Mr. Schab stated that the Applicant constructed a fence seven (7) feet high along Route 26 to within twenty-five (25) feet of the Route 26 intersection with Diane Road at which point the fence lowers to 3.5 feet tall.
8. The Board found that Mr. Schab stated that the Applicant also installed a fence 3.5 feet tall along Diane Road from the intersection to his driveway.
9. The Board found that Mr. Schab stated that the fences on the Property were constructed in compliance with the Sussex County Zoning Code.
10. The Board found that Mr. Schab stated that the Applicant seeks the variance to allow him to construct a fence that is seven (7) feet tall along both Route 26 and Diane Road.
11. The Board found that Mr. Schab stated that the portions of the fence that are 3.5 feet tall do not block out enough sight and sound emanating from Route 26 and Diane Road.
12. The Board found that Mr. Schab stated that DelDOT also changed the drainage pattern and the trees along Diane Road are subject to wetter ground and are now dying.

13. The Board found that Mr. Schab stated that the proposed height of the fence will not be detrimental to the public welfare.
14. The Board found that Mr. Schab stated that the fence will not hinder visibility to on-coming traffic as the stop sign where Diane Road and Route 26 actually intersect is away from the fence.
15. The Board found that Mr. Schab stated that the situation is very unique.
16. The Board found that Mr. Schab stated that the need for the variance was not caused by the Applicant.
17. The Board found that Mr. Schab stated that the Property is already developed.
18. The Board found that Mr. Schab stated that the variance is necessary to enable reasonable use of the Property.
19. The Board found that Mr. Schab stated that the fence will not alter the character of the neighborhood.
20. The Board found that Mr. Schab stated that the use will not have an adverse effect to the surrounding and neighboring properties.
21. The Board found that Mr. Schab stated that variance requested is the minimum variance to afford relief.
22. The Board found that Mr. Lesko confirmed the statements made by Mr. Schab as being true and correct.
23. The Board found that Mr. Lesko testified that DeIDOT took a large portion of the Property and that the loss of land has affected the marketability of the Property.
24. The Board found that Mr. Lesko testified that the variance will have no effect on neighboring property or on traffic.
25. The Board found that Mr. Lesko testified that the trees along Diane Road shield the fence but those trees are dying.
26. The Board found that no parties appeared in support of or in opposition to the Application.
27. Based on the findings above and the testimony and exhibits presented at the public hearing and the public record, the Board determined that the application met the standards for granting a variance. The Property is unique due to the expansion of the DeIDOT right-of-way which led to the removal of trees the Applicant had planted to create a natural buffer between Route 26 and his property. The variance is necessary to enable reasonable use of the Property. The fence will allow the Applicant to provide an additional buffer between his property and Route 26 and Diane Road. The hardship and exceptional practical difficulty were not created by the Applicant. The Applicant previously planted trees along Route 26 and Diane Road to provide a buffer but many of those trees have been removed due to the right-of-way expansion and other trees are dying due to changes in the drainage from Route 26. The right-of-way expansion and the change in the drainage were not created by the Applicant. The variance will not alter the essential character of the neighborhood. The Property was previously buffered by trees and the fence will not be inconsistent with the previous buffer. The testimony and evidence also demonstrates that the fence will have no impact on traffic or visibility in the neighborhood. The variance sought is the minimum variance necessary to afford relief. The use is not detrimental to the public welfare.

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 were Mr. Dale Callaway, Mr. Jeff Hudson, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman. No Board Members voted against the Motion to approve the variance application.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY



Dale Callaway
Chairman

If the use is not established within one (1)
year from the date below the application
becomes void.

Date December 2, 2014