

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: KAREN J. KERSHAW

(Case No. 11555)

A hearing was held after due notice on April 20, 2015. The Board members present were: Mr. Dale Callaway, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for a variance from the height requirement for a fence in the front yard.

Findings of Fact

The Board found that the Applicant was seeking a variance of 2.5 feet from the 3.5 feet height requirement for a fence in the front yard. This application pertains to certain real property located east of Route 30 (Gravel Hill Road) across from and east of Road 251 (Neptune Road) (911 Address: 16743 Gravel Hill Road, Milton, DE); said property being identified as Sussex County Tax Map Parcel Number 2-35-25.00-11.03.

1. The Board was given copies of the Application, a portion of the tax map of the area, a survey of the Property dated August 16, 2013, and a statement from the Applicant regarding the variance standards.
2. The Board found that the Office of Planning & Zoning did not receive any correspondence regarding the Application.
3. Karen Kershaw was sworn in to testify about the Application and she submitted exhibits to the Board, which included photographs of the area and notes about the Application.
4. The Board found that Ms. Kershaw testified that she is permitted by zoning to keep horses on the Property and that she owns two (2) horses. The Property is small and the Applicant needs the entire lot for grazing for her horses.
5. The Board found that Ms. Kershaw testified that the dwelling is close to the nearby road and that traffic on Gravel Hill Road is loud.
6. The Board found that Ms. Kershaw testified that she proposes to construct a privacy fence in the front yard and along the side yards. The fence will be wooden and will be aesthetically pleasing. The fenced in area will be used for grazing.
7. The Board found that Ms. Kershaw testified that the fence will not be detrimental to the public welfare.
8. The Board found that Ms. Kershaw testified that she would not have purchased the Property if she knew that she could not place this type of fence on her lot.
9. The Board found that Ms. Kershaw testified that her property line is 14.5 feet from the side of the road and the proposed fence will not block any views from the road. Corn is grown on an adjacent property closer to the road than the location of the proposed fence.
10. The Board found that Ms. Kershaw testified that the Property is a low lying area and is lower than the road. The fence will not appear six (6) feet tall from the road.
11. The Board found that Ms. Kershaw testified that there is a unique circumstance and that the variance will enable reasonable use of the Property.
12. The Board found that Ms. Kershaw testified that the difficulty was not created by the Applicant.
13. The Board found that Ms. Kershaw testified that she has spoken with some neighbors and they do not oppose the Application.

14. The Board found that Ms. Kershaw testified that the fence will not permanently impair the uses of neighboring properties. The adjacent properties are farm fields. The fence will not be detrimental to the public welfare.
15. The Board found that Ms. Kershaw testified that the Property is directly across from the intersection with Neptune Road and the proposed wooden stockade fence will cut down on the road noise. The fence will provide her with some additional privacy from traffic and will block lights from traffic from shining into her dwelling. The proposed fence will give her two (2) horses privacy and protection from the nearby road
16. The Board found that Ms. Kershaw testified that the proposed stockade fence will run along the front and side property lines. The rear yard will have a wire fence and there will be an internal wire fence.
17. The Board found that Joe Marino was sworn in and testified in opposition to the Application and he submitted pictures of fencing on neighboring properties.
18. The Board found that Mr. Marino testified that he lives across the road from the Applicant at the intersection of Neptune Road and Gravel Hill Road. His property is on higher ground than the Applicant's property.
19. The Board found that Mr. Marino testified that he is concerned the proposed fence will negatively affect his property value but he has no documentation to support his claim that the fence will negatively affect his property value.
20. The Board found that Mr. Marino testified that that he would not object to a shorter fence or if Leland Cypress trees were planted in the front yard.
21. The Board found that Mr. Marino testified that there is a lot of loud traffic at this intersection and that the heavy volume of traffic at the intersection could spook the horses.
22. The Board found that Dr. Christie Bromowitz was sworn in and testified in support of the Application.
23. The Board found that Dr. Bromowitz testified that she has known the Applicant for many years and that the Applicant has always kept an aesthetically pleasing property. The Applicant has high standards for property management and the care of her animals.
24. The Board found that Ms. Kershaw testified that she has no objection to plantings in front of the fence and that she would rather plant a hedge type plant to camouflage the fence.
25. The Board found that Mr. Marino testified that he would have no problem with a hedge type plants being planted in front of the fence.
26. The Board found that one (1) party appeared in support of the Application.
27. The Board found that one (1) party appeared in opposition to the Application.
28. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, 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 to the fact that it is a low-lying property that is lower than the adjacent road. The pictures submitted by the Applicant clearly demonstrate that the Property is lower than the adjacent road. The Property is also unique because it is located across from the intersection of Neptune Road and Gravel Hill Road which is a busy and loud intersection. The Applicant intends to use her property for the grazing of horses, which is permitted under the Sussex County Zoning Code, but the proposed wood stockade privacy fence is needed to limit the impact of this busy intersection on these animals. The testimony from the Applicant and Mr. Marino confirm that the Property is a low-lying lot and that this intersection is well-traveled and loud. It is also unrebutted that the traffic

from the adjacent roads could easily startle the horses. The Property is clearly unique due to these factors.

- b. Due to the uniqueness of the lot, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Applicant seeks to use the Property for the keeping of horses, which is permitted under the Sussex County Zoning Code, but she is unable to do so without the variance. The Property is small and she needs to use the front, side, and rear yards for her horses to graze. Unfortunately, the Property is low-lying which leaves her horses more exposed to cars on the heavily traveled roads nearby. The Applicant has demonstrated that a taller, wooden stockade privacy fence is necessary in order to provide adequate privacy for the Applicant and her horses but she cannot place such a fence on her property without a variance. The Property's low-lying nature and its proximity to the Neptune Road / Gravel Hill Road intersection greatly limit the Applicant's privacy. The Board is convinced that the variance requested is necessary to enable reasonable use of the Property because it will allow the Applicant to build a taller privacy fence which will better shield the Applicant and her horses from the traffic on the adjacent road.
- c. The exceptional practical difficulty was not created by the Applicant. The low-lying condition of the Property and its proximity to the Neptune Road / Gravel Hill Road intersection has created this difficulty. The Board finds that the testimony and exhibits submitted by the Applicant on this issue were credible and persuasive. The Board also found persuasive the Applicant's testimony that she relied on her realtor and other professionals when purchasing the Property to advise her as whether she could build such a fence without a variance. The Board is convinced that the Applicant was unaware of this requirement when she purchased the Property and that she relied on this advice to her detriment. Ultimately, the Applicant created neither the lot's condition nor its proximity to the nearby intersection.
- d. 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 Property is surrounded by farmland and the raising of horses is consistent with such use. The Applicant's testimony and exhibits demonstrate that nearby property consists of cornfields which are closer to Gravel Hill Road than the proposed fence. The corn grown on these fields is likely to be as tall, or taller, than the proposed fence. The Board finds that the fence will have no detrimental effect on neighboring properties or traffic. The pictures and testimony of the Applicant were particularly persuasive to the Board. Neighbor Joe Marino raised concerns about the effect of the fence on property values but he provided no appraisals or documentation to support this claim. The Board was not persuaded by the concerns raised by Mr. Marino about the effect of the fence on his property or the neighborhood. In fact, Mr. Marino testified that he would have no objection to the fence if plantings such as hedges or bushes were planted in between the fence and Gravel Hill Road. Ultimately, the Board was not convinced that the variances would somehow alter the essential character of the neighborhood or be detrimental to the public welfare.
- e. 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 Applicant has demonstrated that the variance sought will allow the proposed wooden stockade fence to be constructed

at a height that will provide adequate privacy and safety to the Applicant and her horses.

- f. As part of the approval, the Board required that the Applicant must plant a significant amount of bushes, hedges, and similar plantings between the fence in the front yard and Gravel Hill Road. This landscape buffer is to serve to enhance the aesthetics of the fence area and to limit the views thereof.

The Board granted the variance application with conditions 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 with conditions. The Board Members in favor were Mr. Dale Callaway, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman. No Board Members voted against the Motion to approve the variance application with conditions. Mr. Jeff Hudson did not participate in the vote or discussion of this 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 June 9, 2015