

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: MICHAEL CARTA & ELLEN CARTA

(Case No. 11615)

A hearing was held after due notice on August 3, 2015. 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 an application for a variance from the maximum allowable height requirement for a fence.

Findings of Fact

The Board found that the Applicants are seeking a variance from the maximum allowable height requirement for a fence. This application pertains to certain real property located on the northeast corner of Roberts Road and Old Mill Road (911 Address: 2 Roberts Road, Lewes); said property being identified as Sussex County Tax Map Parcel Number 3-34-1.00-295.00.

1. The Board was given copies of the Application, pictures of the proposed fence, a portion of the tax map of the area, and an undated survey of the Property.
2. The Board found that the Office of Planning & Zoning received had not received any correspondence in support of or in opposition to Application.
3. Michael Carta was sworn in to testify about the Application. The Applicant submitted pictures of the Property.
4. The Board found that Mr. Carta testified that the Property consists of ½ acres.
5. The Board found that Mr. Carta testified that the Leland Cypress trees on the Property were damaged in a storm and had to be removed. The trees were located on the rear of the Property.
6. The Board found that Mr. Carta testified that the proposed vinyl fence will be six (6) feet high along the rear yard property line. The fence will be an attractive fence that looks like wood.
7. The Board found that Mr. Carta testified that the fence would not be visible from Old Mill Road due to the location of Leland Cypress trees on neighboring properties. The road is a dead end road.
8. The Board found that Mr. Carta testified that the Property to the rear is not attractive and the proposed fence will not be visible to the neighbors to the rear yard.
9. The Board found that Mr. Carta testified that the proposed fence will not interfere with the traffic or the visibility to the road.
10. The Board found that Mr. Carta testified that the fence will block their view of the neighbor's property and will keep trash from blowing onto their property.
11. The Board found that Mr. Carta testified that the fence will connect to an existing split rail fence along Road 265A.
12. The Board found that Paul Reiger testified in support of the Application.
13. The Board found that one (1) party appeared in support of the Application.
14. The Board found that no parties appeared in opposition to the Application.
15. 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 as it is a corner lot adjacent to a dead end road. The rear of the Property was previously bordered by Leland Cypress trees which have been removed after damage from a storm. The uniqueness of the Property is apparent when reviewing the survey and pictures provided by the Applicant. The uniqueness of the Property has created an exceptional practical difficulty for the Applicant who seeks to place a fence on the lot.
- b. Due to the uniqueness of the lot, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property is unique as it is a corner lot adjacent to a dead end road. The Property is also adjacent to a property which had previously been separated by large Leland Cypress trees. Those trees have been removed after storm damage and the fence will serve as a barrier to replace those trees. The Applicant seeks to construct a fence of a reasonable height but is unable to do so 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 a reasonably sized fence to be placed on the Property. The Applicant has testified that the fence is needed to prevent trash from blowing onto his property and to serve as a barrier between the properties. The Board is convinced that the size, shape, and location of this fence are reasonable, which is confirmed when reviewing the survey and pictures provided by the Applicant.
- c. The exceptional practical difficulty was not created by the Applicants. The Applicants did not create the location of the Property as a corner lot. The unique characteristics of the lot and the removal of the Leland Cypress trees due to a storm have resulted in a lack of barrier between the Property and neighboring lots. The Applicants seek the approval for the proposed fence so as to be able to replace the existing barrier. As such, the Board is convinced that the exceptional practical difficulty was not created by the Applicants.
- 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 Board is convinced that the fence will have no effect on the character of the neighborhood. The unrebutted testimony confirms that a row of Leland Cypress trees previously served as a barrier between the Property and neighboring lands but the tree line has been removed after storm damage. The proposed fence will simply replace that barrier. The pictures of the fence confirm that it is an attractive fence and the Applicant has testified that it will require minimal maintenance. Existing vegetation on neighboring lands will shield the fence from the adjacent roadway. No evidence was presented which would indicate that the variance 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 Applicants have demonstrated that the variance sought will allow the Applicants to construct a reasonably sized fence on the Property.

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 September 15, 2015.